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THE GENERAL STATUTES OF NORTH CAROLINA

1971 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
W. M. WILLSON, J. P. MUNGER, SYLVIA FAULKNER AND
H. A. FINNEGAN, JR.

Volume 3A

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Preface

This Cumulative Supplement to Replacement Volume 3A contains the general laws of a permanent nature enacted at the 1966, 1967, 1969 and 1971 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1967, 1969 and 1971 Sessions of the General Assembly affecting Chapters 106 through 116A of the General Statutes.

Annotations:

Sources of the annotations:
North Carolina Reports volumes 265 (p. 217)-279 (p. 191).
North Carolina Court of Appeals Reports volumes 1-11 (p. 596).
Federal Reporter 2nd Series volumes 347 (p. 321)-443 (p. 1216).
Federal Supplement volumes 242 (p. 513)-328 (p. 224).
United States Reports volumes 381 (p. 532)-403 (p. 442).
Supreme Court Reporter volumes 86-91 (p. 1976).
North Carolina Law Review volumes 43 (p. 667)-49 (p. 591).
Wake Forest Intramural Law Review volumes 2-6 (p. 568).
Opinions of the Attorney General.

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The General Statutes of North Carolina
1971 Cumulative Supplement

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§ 106-11. Salary of Commissioner of Agriculture.—The salary of the Commissioner of Agriculture shall be twenty-five thousand dollars ($25,000.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4; 1967, c. 1130; c. 1237, s. 4; 1969, c. 1214, s. 4; 1971, c. 912, s. 4.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July

1, 1969, increased the salary from $20,000 to $22,500.

The 1971 amendment, effective July 1, 1971, increased the salary from $22,500 to $25,000.

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§ **106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture.**—In order to encourage maximum cooperation and efficiency, the Department of Agriculture shall pay to the county commissioners of the various counties of the State from appropriations made to the Department of Agriculture, the sum of forty cents (40¢) per acceptable report received by the Department of Agriculture in accordance with the provisions of G.S. 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety percent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty percent (80%) of the tracts of land in a township, the Department of Agriculture shall withhold from the amount due the county for furnishing such reports the sum of forty cents (40¢) for each farm report shortage, and shall further deduct therefrom the sum of two dollars ($2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of G.S. 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this Part. (1921, c. 201, s. 3; C. S., s. 4689 (c); 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2; 1969, c. 796.)

Editor's Note. — The 1969 amendment, effective July 1, 1970, substituted "forty cents (40¢)" for "twenty cents (20¢)" in the first and second sentences.

ARTICLE 4.

Insecticides and Fungicides.

§§ **106-52 to 106-65**: Repealed by Session Laws 1971, c. 832, s. 4, effective January 1, 1972.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§§ **106-65.1 to 106-65.12**: Repealed by Session Laws 1971, c. 832, s. 4, effective January 1, 1972.

Cross Reference.—For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4B.

Aircraft Application of Pesticides.

§§ **106-65.13 to 106-65.21**: Repealed by Session Laws 1971, c. 832, s. 4, effective January 1, 1972.

Cross Reference. — For present provisions as to pesticide control, see §§ 143-434 to 143-470.

ARTICLE 4C.

Structural Pest Control Act.

§ **106-65.23. Structural Pest Control Division of Department of Agriculture created; Director; Structural Pest Control Committee created; appointment; terms; quorum.**—There is hereby created, within the North Carolina Department of Agriculture, a new division thereof, to be known as the Structural Pest Control Division of said Department.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said Division whose duties and authority shall be determined by the Commissioner, subject to approval of the Board of Agriculture and subject to the provisions of this article. Said Director shall act as secretary to the Structural Pest Control Committee herein created.

There is hereby created a Structural Pest Control Committee to be composed of five members. The Commissioner of Agriculture shall designate one member of the Board of Agriculture who shall serve as an ex officio member of said Committee for such time as he is a member of the Board of Agriculture. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture to serve on said Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of said University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of said University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of his choice to serve on said Committee at the pleasure of the dean. The Governor shall appoint two members of said Committee who are actively engaged in the pest control industry and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: One for a two-year term and one for a three-year term. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant. A member of the Committee appointed by the Governor shall not succeed himself.

It shall be the duty of the Structural Pest Control Committee, in addition to conducting hearings relating to the suspension and revocation of licenses issued under this article, and in addition to making rules and regulations pursuant to G.S. 106-65.29, to report annually to the Board of Agriculture the results of all hearings conducted by the Committee and to report the financial status of this Division of the Department of Agriculture.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive twenty dollars ($20.00) per diem while actually engaged in the business of the Committee. All members of the Committee and the attorney assigned to said Committee by the Attorney General shall be entitled to receive eight cents (8¢) per mile for travel and such other expenses as are incurred in the performance of their duties.

Three members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without three votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that three members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

All members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1957, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7.)

Editor's Note. — The 1967 amendment rewrote this section.

Session Laws 1967, c. 1184, s. 14, provides: "The terms of all members of the Structural Pest Control Commission shall expire on June 30, 1967."

Session Laws 1967, c. 1184, s. 15, provides: "All rules and regulations heretofore made by the Structural Pest Control Commission not inconsistent with the provisions of article 4C of chapter 106 of the General Statutes and this act, shall remain in full force and effect until repealed, revised, or amended pursuant to the provisions of said article and this act or until declared invalid by a court of competent jurisdiction."

The 1969 amendment deleted "in addition to the duties imposed by G.S. 106-65.36" following "Committee" near the beginning of the fourth paragraph.

State Government Reorganization.—The Structural Pest Control Division was transferred to the Department of Agriculture by § 143A-60, enacted by Session Laws 1971, c. 864.

§ 106-65.24. Definitions.

(2) The term "branch office," as used in this article, shall mean and include any place of doing business which has two or more employees engaged full time in the control of insect pests, rodents, or wood-destroying organisms.

(3) "Committee" means the Structural Pest Control Committee.

(11) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3.)

Editor's Note. — The 1967 amendment rewrote subdivision (3) and added subdivision (11).

Subdivision (2) is set out in the Supplement to correct an error appearing in the replacement volume.

As the rest of the section was not affected by the amendment, it is not set out.

§ 106-65.25. Phases of structural pest control; license required; exceptions.—(a) Structural pest control is divided into the following phases:

(1) Control of wood-destroying organisms by any method other than fumigation,

(2) Control of household pests by any method other than fumigation,

(3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Committee, and signed by the Commissioner of Agriculture.

(1967, c. 1184, s. 4.)

Editor's Note. — The 1967 amendment substituted "Committee, and signed by the Commissioner of Agriculture" for "Commission" at the end of subsection (a).

As subsection (b) was not affected by the amendment, it is not set out.

§ 106-65.26. Qualifications of applicants for license.—Any applicant for a license must present satisfactory evidence to the Committee concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied, or

(2) One or more years training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience (each year of such training may be substituted for one-half year of practical experience), or

(3) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision.

(4) All applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation.

No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime charged involving moral turpitude or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this article. (1955, c. 1017; 1967, c. 1184, s. 5.)

Editor's Note. — The 1967 amendment substituted "Committee" for "Commission" in the first sentence and added the last paragraph.

§ 106-65.27. Examination of applicants; fee; license not transferable.—(a) All applicants must pass a satisfactory oral or written examination, or both oral and written examination. Frequency of such examination shall be in the discretion of the Committee, consideration being given to the number of applications received, provided that a minimum of two examinations shall be given annually. The examination will cover phases of structural pest control (control of wood-destroying organisms, household pests and fumigation).

An applicant shall submit with his application for examination an examination fee of twenty-five dollars ($25.00) for each of the phases of structural pest control in which he chooses to be examined. An examination for one or more phases of structural pest control may be taken at the same time. If an applicant fails to pass an examination for one or more phases of structural pest control, he shall be entitled to take one additional examination, at a regularly scheduled examination, without the payment of another examination fee.

(b) A license shall not be transferable. When there is a transfer of ownership, management or operation of a business of a licensee hereunder, the new owner, manager or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, shall have 90 days from such sale or transfer, or until the next meeting of the Committee following the expiration of said 90-day period, to have a qualified licensee to operate said business. (1955, c. 1017; 1967, c. 1184, s. 6.)

Editor's Note. — The 1967 amendment rewrote this section.

§ **106-65.28. Revocation or suspension of license.**—(a) Any license may be revoked or suspended by a majority vote of the Committee, after notice and hearing, as provided in G.S. 106-65.32, for any one or more of the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods of materials which are not reasonably suitable for for the purpose contracted.
(2) Failure of the licensee to give the Committee, the Director, or their authorized representatives, upon request, true information regarding methods and materials used, or work performed.
(3) Failure of the license holder to make registrations herein required or failure to pay the registration fees.
(4) Any misrepresentation in the application for a license.
(5) Wilful violation of any rule or regulation adopted pursuant to this article.

(b) Suspension of any license under the provisions of this article shall not be for less than 10 days nor more than two years, in the discretion of the Committee.

If a license is suspended or revoked under the provisions hereof, the licensee shall within five days of such suspension or revocation, surrender all licenses and identification cards issued thereunder to the Director or his authorized representative.

Any licensee whose license is revoked under the provisions of this article shall not be eligible to apply for a new license hereunder until two years have elapsed from the date of the order revoking said license, or if an appeal is taken from said order of revocation, two years from the date of the order or final judgment sustaining said revocation. (1955, c. 1017; 1967, c. 1184, s. 7.)

Editor's Note. — The 1967 amendment designated the provisions of this section as subsection (a), rewrote the introductory language and subdivision (2) of such subsection, added subdivision (5) therein, and added subsection (b).

§ **106-65.29. Rules and regulations.** — The Committee is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017; 1967, c. 1184, s. 8.)

Editor's Note. — The 1967 amendment substituted "Committee" for "Commission" in the first sentence.

§ **106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.**—For the enforcement of the provisions of this article, the Director is authorized, subject to the approval of the Commissioner and Board of Agriculture, to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this article. The inspectors shall be known as "Structural Pest Control Inspectors." The Director, subject to the approval of the Commissioner of Agriculture and the Board of Agriculture, shall enforce the provisions of this article by making or causing to be made periodical and unannounced inspections of work done by licensees under this article engaged in any one or more phases of structural pest control as defined in G.S. 106-65.25. The Director shall cause the prompt and diligent investigation of all reports of violations of the provisions of this article and the rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by the Director, or inspectors, of any property without first securing the permission of the owner or occupant thereof.

Every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Director, a resident agent upon whom service or notice of process may be had to enforce the provisions of this article or any civil or criminal liabilities arising hereunder. (1955, c. 1017; 1967, c. 1184, s. 9.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106 65.31. Annual license fee; registration of servicemen, salesmen and estimators; identification cards.—The fee for the issuance of a license for any one phase of structural pest control, as the same is defined in G.S. 106-65.25, shall be one hundred dollars ($100.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for an additional fee of fifty dollars ($50.00) per license phase. Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew any license issued under the provisions of this article on or before August 1 of each year, shall pay, in addition to the annual license fee, the sum of ten dollars ($10.00) for each phase before his license is renewed.

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of five dollars ($5.00).

A license holder shall register with the Director within 30 days of employment, the names of all solicitors and servicemen (not common laborers) and shall pay a registration fee of twenty dollars ($20.00) for each name registered, which fee shall accompany the registration. All registrations expire when a license expires. Each employee of a licensee for whom registration is made and registration fee paid shall be issued an identification card which shall be carried on the person of the employee at all times when performing any phase of structural pest control work. An identification card shall be renewed annually by payment of a renewal fee of twenty dollars ($20.00). An identification card shall be displayed upon demand to the Director or his authorized representative, or to the person for whom any phase of structural pest control work is being performed. When an identification card is lost or destroyed, the licensee shall secure a duplicate identification card for which he shall pay a fee of one dollar ($1.00). The licensee shall be responsible for registering and securing identification cards for all employees who are salesmen, servicemen and estimators.

It shall be unlawful for a serviceman, salesman or estimator to engage in the performance of any work covered by this article without having first secured and in his possession an identification card It shall be unlawful for a licensee to direct, or procure any salesman, serviceman or estimator to engage in the performance of any work covered by this article without having first applied for an identification card for such employee or agent; provided, however, that the licensee shall have 30 days after employing a serviceman, salesman or estimator within which to apply for an identification card.

All registrations and applications for licenses and identification cards shall be filed with the Director. (1955, c. 1017; 1957, c. 1243, s. 4; 1967, c. 1184, s. 10.)

Editor's Note. — The 1967 amendment rewrote this section.

§ 106-65.32. Proceedings and hearings under article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.—Proceedings under this article shall be taken by the Structural Pest Control Committee for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Committee, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Committee shall serve notice by registered mail of the time, place of hearing, and a copy of the charges upon the accused at least 30 days before the date of the hearing. The Committee for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Committee and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Committee under the seal of the Committee and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Committee shall be under oath or affirmation.

The record of all hearings and judgments shall be kept by the secretary of the Committee and in the event of suspension or revocation of license, the Committee shall, within 10 days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county.

Any licensee may appeal to the Superior Court of Wake County the revocation or suspension of a license issued under the provisions of this article and such appeal shall be made pursuant to the provisions of article 33 of chapter 143 of the General Statutes. (1955, c. 1017; 1957, c. 1243, s. 5; 1967, c. 1184, s. 11.)

Editor's Note. — The 1967 amendment substituted "Committee" for "Commission" throughout this section, and added the last paragraph.

§ **106-65.33. Violation of article or rules and regulations of Committee a misdemeanor.**—Any person violating any provision of this article or any rule or regulation of the Committee made pursuant to this article shall be guilty of a misdemeanor and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1955, c. 1017; 1957, c. 1243, s. 6; 1967, c. 1184, s. 12.)

Editor's Note. — The 1967 amendment rewrote this section.

§ **106-65.34:** Repealed by Session Laws 1967, c. 1184, s. 13.

ARTICLE 12.

Food, Drugs and Cosmetics.

§ **106-129. Foods deemed to be adulterated.**

Editor's Note.—For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

ARTICLE 13.

Canned Dog Foods.

§ **106-146. Labeling of canned dog food required.**—Every can of dog food sold, offered or exposed for sale within this State shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the contents of the can, the name, brand or trademark under which the article is sold; the name and address of the manufacturer or distributor; the name of each and all ingredients of which the article is composed; and the guaranteed analysis stated in such terms as the Board of Agriculture by regulation requires to advise the user of the composition of the dog food or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists. (1936, c. 307, s. 1; 1941, c. 290, s. 1; 1955, c. 267, s. 1; 1971, c. 897.)

Editor's Note.—

The 1971 amendment, effective Sept. 1, 1971, in the first sentence, inserted "contents of the," inserted "or distributor," and substituted the language following "composed" for "the name of each and all ingredients of which the article is composed; a guaranty that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein." The amendment also added the second sentence.

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ 106-176. Establishment and equipment kept clean; containers sterilized.—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily. All returnable bottles and similar type returnable containers must be cleaned and sanitized in caustic soda or alkali solution in not less than three percent alkali or to an equivalent cleansing and sanitizing effect as prescribed by the rules and regulations adopted by the Board of Agriculture. Single service containers must be cleaned and sanitized according to rules and regulations adopted by the North Carolina Board of Agriculture. (1935, c. 372, s. 3; 1937, c. 232; 1969, c. 1068.)

Editor's Note. — The 1969 amendment rewrote the provisions of this section relating to cleaning and sanitizing of bottles and containers.

§ 106-184.1. Department of Agriculture authority. — The Board of Agriculture shall have authority to make rules and regulations for the enforcement of this article. The Board shall have authority to delegate the responsibility for determining the amount of any ingredients which may be used in the manufacture of soft drinks in order that soft drinks will comply with the North Carolina Food, Drug and Cosmetic Act and insofar as is practicable, federal law and regulations. No ingredient shall be used in the manufacture of soft drinks without the prior approval of the Board of Agriculture or such other person as is designated by the Board of Agriculture. The Board shall by regulation provide for appeals from the ruling of the Board or such other person designated by the Board. (1969, c. 49.)

ARTICLE 17.

Marketing and Branding Farm Products.

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." This proviso shall not apply to peaches. (It is the intent and purpose of this exemption to exempt peaches from the requirements of article 17 of chapter 106 that ungraded peaches, when sold or offered for sale, shall be marked "ungraded," "field run," "not graded," "grade not determined" or "unclassified," or words of similar import.) The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five percent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483; 1969, c. 849.)

Editor's Note.—

The 1969 amendment inserted in the first paragraph the sentence reading "This proviso shall not apply to peaches" and the sentence in parentheses relating to ungraded peaches.

§ **106-189.1. Apples marked as to grade; penalty.** — (a) All apples sold or offered for sale in closed containers in this State shall bear on the container, bag or other receptacle, the applicable U.S. grade or standard, or marked "unclassified," "not graded" or "grade not determined."

(b) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars ($50.00). Each day on which apples are sold or offered for sale in violation of the provisions of this section shall constitute a separate violation. (1971, c. 867, ss. 1, 2.)

Editor's Note. — Session Laws 1971, c. 867, s. 3, makes the act effective July 1, 1972.

ARTICLE 22.

Inspection of Bakeries.

§ **106-225.3. Unlawful sale of bread, rolls or buns.**—(a) In accordance with Article 12, Chapter 106, G.S. 106-129(2)d, of the North Carolina Food, Drug and Cosmetic Act, the General Assembly finds that certain white bread products when artificially colored are misleading to the consumer in that such products convey a visual appearance of richness which is in fact not present in the product.

Therefore, no loaves of white bread, white rolls, or white buns, as defined in Chapter XV, Article 2, § 15-6, § 15-7, § 15-8, § 15-9, and § 15-10, Bakeries and Bakery Products, of the rules, regulations, definitions and standards of the North Carolina Department of Agriculture, or white biscuits, which are artificially colored by either natural or synthetic dyes, pigments, or other means, to simulate an appearance of richness associated with use of distinctive quantities of such ingredients as butter and/or eggs, shall be sold, or delivered, held, or offered for sale, whether as completely baked, partially baked, or unbaked product.

This section shall include the so-called "brown and serve," "bake and serve" and "quick bread" products and the like, which may be leavened by officially-accepted chemical agents, natural organic agents such as yeast, mechanical means, or any combination of these.

The term "white biscuits" as used herein shall be deemed a commercial or so-called "home-style" bread product, also known as "raised biscuits," "combination biscuits," "air-leavened biscuits," and the like, and made from dough consisting basically of flour, water or other moistening agent such as milk or buttermilk, shortening, and leavening, together with any officially-accepted optional ingredients; such dough is cut or dropped into small shapes ready for baking.

(b) Any person, firm or corporation who shall violate this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in G.S. 106-230. (1969, c. 1121, ss. 1, 2; 1971, c. 475.)

Editor's Note. — Session Laws 1969, c. 1121, s. 4, provides: "This act shall become effective ten days after ratification." The act was ratified June 30, 1969.

The 1971 amendment, effective Sept. 1, 1971, rewrote subsection (a).

§ **106-227. Closing of plant; report of violation of Article to solicitor.**—If it shall appear from examination that any provision of this Article or any rule or regulation of the Board of Agriculture has been violated, the Commissioner of Agriculture shall have authority to order the bakery or place closed until the law or regulation has been complied with. Upon refusal or failure of the owner or operator of any bakery to immediately close such bakery when so ordered by the Commissioner, the Commissioner may immediately apply to, and any regular, special or emergency superior court judge may, without notice, order such bakery closed until the law or regulation has been complied with; provided, that the owner or operator of such bakery may on written motion demand a hearing as to whether such order of closing shall remain in effect and such hearing shall be held within seven days of such written motion. At such hearing the superior court judge conducting such hearing may rescind, modify or affirm such order of closing.

In addition to the civil remedies provided herein, the Commissioner may also certify the facts to the solicitor of the district in which the violation occurred for criminal prosecution. (1921, c. 173, s. 7; C.S., s. 7251(r); 1971, c. 474, s. 1.)

Editor's Note. — The 1971 amendment rewrote this section.

§ **106-230. Violation of Article a misdemeanor.**—Any person, firm or corporation who shall violate the provisions of this Article or any rule or regulation of the Board of Agriculture made under authority of this Article shall be guilty of a misdemeanor and shall be fined not in excess of one hundred dollars ($100.00) or imprisoned for not in excess of 30 days, or both fined and imprisoned; provided however, that for a second or subsequent violation a fine not in excess of five hundred dollars ($500.00) or imprisonment for not in excess of 90 days, or both, may be imposed by the court. (1921, c. 173, s. 10; C. S., s. 7251(u); 1971, c. 474, s. 2.)

Editor's Note.—The 1971 amendment rewrote this section.

ARTICLE 25A.

North Carolina Egg Law.

§ **106-245.16. Standards, grades and weight classes.**—The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs sold or offered for sale in this State as will protect the consumer and the institutional consumer from eggs which are injurious or likely to be injurious to health by reason of the condition of the shell, or contents thereof, or by reason of the manner in which eggs are processed, handled, shipped, stored, displayed, sold or offered for sale. Such standards of quality, grades and weight classes as are promulgated and established by the Board shall also promote honesty and fair dealings in the poultry industry. Such standards, grades and weight classes may be modified or altered by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1; 1969, c. 139, s. 1.)

Editor's Note.—The 1969 amendment rewrote this section.

Section 2 of c. 139, Session Laws 1969, provides that this act shall not apply or affect any pending litigation.

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ **106-266.6. Definitions.**—As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) "Commission" means the North Carolina Milk Commission created by this Article.

(4) "Distributor" or "subdistributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

  a. Persons, irrespective of whether any such person is a producer:

    1. Who pasteurize or bottle milk or process milk into fluid milk;

    2. Who sell and/or market fluid milk at wholesale or retail:

      I. To hotels, restaurants, stores or other establishments for consumption on the premises,

      II. To stores or other establishments for resale, or

      III. To consumers;

    3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

  b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) "Health authorities" includes the State Board of Health, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.

(6) "Licensee" means a licensed milk distributor.

(7) "Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

(8) "Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed, and kept; including milk that is produced under strict sanitary conditions, and cooled, pasteurized, standardized or otherwise processed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several forms) and skimmed milk. Said term excludes the lacteal secretions of one or more dairy cows where the secretion is to be sold for any other purpose.

(9) "Person" means any person, firm, corporation or association.

(10) "Producer" means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.

(11) "Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

(12) "Subdistributor" as distinguished from a "distributor" means one who does not process milk but purchases its milk from a licensed distributor for distribution.

(13) "Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1; 1971, c. 779, s. 1.)

Revision of Article.—Session Laws 1971, c. 779, revised and rewrote this Article, substituting present §§ 106-266.6 to 106-266.19 for former §§ 106-266.6 to 106-266.21. No attempt has been made to point out the changes effected, but the historical citations to the former sections have been added to the corresponding sections in the revised Article. Cases cited under the provisions of this Article were decided prior to the 1971 revision.

Session Laws 1971, c. 779, ss. 2 and 3 provide:

"Sec. 2. The reorganization of the Commission and revision of its powers and duties brought about by this amendment shall in no way affect the validity or continuity of any rule, regulation, order or action of the Commission which is in effect at the time this amendment becomes effective. All valid rules, regulations, orders and actions taken or adopted by the Commission at any time prior to the effective date of this amendment shall continue in full force and effect (without the necessity for readoption or reaffirmation of same) until such time as the same are rescinded or revised by the Commission.

"Sec. 3. The terms of office of present members of the Commission shall expire on the date when this act becomes effective."

The act was ratified July 7, 1971 and made effective 90 days after its ratification.

No Conflict with Federal Law.—There is no conflict between the North Carolina Milk Commission law and regulations and the federal procurement statute, nor is there conflict with the Capper-Volstead Act. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Regulations.—Control over the business of producing or dealing in milk and milk products is within the police power of the State, and reasonable regulation of the industry does not violate the constitutional right of equal protection. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ **106-266.7. Milk Commission continued; membership; chairman; compensation; quorum; cooperation of other agencies; official acts; meetings; principal office.**—(a) There is hereby continued a Milk Commission, consisting of seven members, all of whom shall be appointed by the Governor, and one of whom shall be a Grade A producer whose primary interest is operating a dairy farm and one a distributor or employee of a distributor; the other five shall be public members and shall have no financial interest in, or be directly involved in, the production, processing, or distribution of milk or products derived therefrom. Of the Commission members appointed following the ratification of this Article, the Governor shall appoint one for a term of one year, two for a term of two years, two for a term of three years, and two for a term of four years. Thereafter appointments of Commission members shall be made for a term of four years, ending on June 30th of the appropriate year; provided, however, that all members appointed pursuant to this section shall serve until their successors are appointed and qualified. In case of death or resignation of a member of the Commission prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term.

(b) At the first meeting of the Commission held after the effective date of this act, the Commission shall elect one of its public members as its chairman to serve through June 30th of the next following year. Thereafter, at its first meeting held on or after July first of each year, the Commission shall elect one of its public members to serve as chairman through June 30th of the next following year.

(c) The Commission is hereby authorized and empowered to employ an Administrator and such other personnel, including but not limited to, the services of any agency or agencies, either inside or outside the State, as may be deemed necessary in assembling information on costs and other factors needed to carry out the provisions of this Article.

(d) The compensation for members of the Commission shall be set by the Governor with the approval of the Advisory Budget Commission. Members of the Commission shall also be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(e) The compensation of the Administrator shall be set according to law.

(f) All sums required for the operation of the Commission—salaries, per diem, and expenses—shall be paid out of special assessments collected from producers and distributors as set forth in G.S. 106-266.11.

(g) Four members of the Commission shall constitute a quorum.

(h) The Commission may call upon the Commissioner of Agriculture, the Director of Agricultural Research, the Director of the Agricultural Extension Service, or any other agency or department of the State for such information or services as such agency or department can provide, and such agency or department shall furnish such information or services, without compensation therefor, as in its opinion is practicable.

(i) The Commission shall, subject to the limitations herein contained and the rules and regulations of the Commission, enforce the provisions of this Article; but no official act shall be taken, rule or regulation be promulgated, or official order be made or enforced, with respect to the provisions of this Article without the due approval of the Commission.

(j) The Commission shall, by rule or otherwise, fix the time for holding regular meetings. The chairman, or any two members of the Commission, may at any time call a special meeting of the Commission. Such call shall designate the time and place of the meeting, and shall give not less than five days written notice to each member by first-class mail to the address designated for said member on the records of the Commission. Notice of special meeting shall be signed by the person or persons calling the meeting and shall give a brief description of the business to be considered at said meeting. In addition, a special meeting of the Commission may be held at any time or place, either within or without the State, with the unanimous consent of all members of the Commission.

(k) The principal office of the Commission shall be in the City of Raleigh, North Carolina, in rooms assigned by the Department of Administration. (1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1; 1965, c. 213; 1971, c. 779, s. 1.)

State Government Reorganization.—The Milk Commission was transferred to the Department of Commerce by § 143A-182, enacted by Session Laws 1971, c. 864.

The purpose of the act creating the Milk Commission was to protect the public interest in a sufficient, regularly flowing supply of wholesome milk and, to that end, to provide a fair price to the milk producer for his product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, 270 N.C. 323, 154 S.E.2d 548 (1967).

§ **106-266.8. Powers of Commission.**—The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(1) To confer with the legally constituted authorities of other states of the United States, with a view of securing a uniformity of milk control,

with respect to milk coming into the State of North Carolina and going out of the said State in interstate commerce, with a view of accomplishing the purpose of this Article, and to enter into a compact or compacts for such uniform system of milk control.

(2) To investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk for consumption in the State of North Carolina.

(3) To supervise and regulate the transportation, processing, storage, distribution, delivery and sale of milk for consumption; provided that nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers.

(4) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors as between themselves, or that may arise between them as groups.

(5) To cause examination into the business, books, and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of producers, and milk distributors, and require them to produce their records, books, and accounts; to subpoena any other person from whom information is desired.

(6) To take depositions of witnesses within or without the State. Any member of the Commission or any employee of the Commission, so designated, may administer oaths to witnesses and sign and issue subpoenas.

(7) To make, adopt, and enforce all rules, regulations and orders necessary to carry out the purposes of this Article. Every rule, regulation and order of the Commission shall be posted for inspection in the main office of the Commission. A certified copy of all general administrative rules and regulations or rules of practice and procedure shall be filed with the Secretary of State and with each clerk of the superior court as required by G.S. 143-195 and G.S. 143-198.1, and a certified copy thereof shall likewise be mailed in a sealed envelope, with postage prepaid, to all licensed distributors and associations of producers in the State. Such filing and mailing shall constitute due and sufficient notice to all persons affected by such rule, regulation or order. An order which applies only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby, or in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served.

(8) The operation and effect of any provision of this Article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this Article of a specific power or powers.

(9) The Commission shall not exercise its power in any market until a public hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its power in such market. The Commission may, on its own motion, call such a hearing, and shall call such a hearing upon the written application of a producers' association organized under the laws of the State, supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' organization exists on said market, the Commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such

hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at the time and place and after such notice as the Commission may determine.

The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

(10) a. The Commission, after investigation and public hearing, may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk.

b. The Commission, after investigation and public hearing and finding as a fact that it is in the public interest, may fix the minimum wholesale and retail prices to be charged for milk in any market area and may fix different prices for different grades or classes of milk.

c. Prices fixed under this subdivision (10) shall not become effective until 10 days after the mailing of notice of the action of the Commission. Prices fixed under b above shall remain in effect for at least 30 days and until the Commission finds it is in the public interest to remove said prices.

d. In determining the reasonableness of prices to be paid or charged in any market, the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public.

e. In establishing producer prices for milk moving into other states, the Commission shall consider prevailing producer prices established by state or federal authority in such states.

(11) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this Article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing, whenever said applicant or licensee shall have violated the regulations adopted by the Commission or failed to comply with the requirements of this Article 28B, or upon any of the following grounds:

a. Where the distributor has failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or association of producers, or has, if a subdistributor, failed to account and make payment for any milk purchased or received on consignment or otherwise from a distributor; provided, however, that it be shown there was reasonable cause for any such failure to account and make payment, and that such accounting and payment can and will be made promptly, the Commission shall not suspend or revoke a license solely for such failure until a reasonable opportunity has been afforded to make such accounting and payment.

b. Where the applicant or distributor has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied, or where it is shown that the applicant or distributor has insufficient financial responsibility, personnel or equipment properly to conduct the milk business.

c. Where the applicant or distributor has engaged in a course of action such as to satisfy the Commission of an intent on his part to deceive or defraud customers, producers or consumers.

d. Where the applicant or distributor has failed to maintain such records as are required by the rules and regulations of the Commission or has failed to furnish the statements or information required by the Commission under this Article 28B or has kept false records or furnished false statements with respect to such information.

e. Where the applicant or distributor has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated.

In any case where the Commission shall suspend a license, the Commission may, in its discretion, accept from the licensee an offer in compromise of not less than fifty dollars ($50.00) and not more than five thousand dollars ($5,000) as a penalty in lieu of such suspension, and thereupon rescind the suspension. All receipts from such penalties shall be paid by the Commission to the State Treasurer for disposition in the same manner as assessments, as provided by G.S. 106-266.12. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(12) Any member of the Commission, or any person designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is processed, stored, bottled or manufactured into food products. Any member of the Commission or designated employee shall have the power to inspect and copy books and records in any place within the State for the purpose of ascertaining facts to enable the Commission to administer this Article. The Commission may combine such information for any market or markets and make it public.

(13) The Commission may define after a public hearing what shall constitute a natural-market area and define and fix limits of the milk shed or territorial area within which milk shall be produced to supply any such market area: Provided, that producers, producer-distributors or their successors now shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

(14) Each licensee shall from time to time, as required by the Commission, submit verified reports containing such information as the Commission may require. (1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292; 1963, c. 797, ss. 1-3; 1965, c. 936, s. 1; 1971, c. 779, s. 1.)

Regulation of Milk Prices.—The Commission was established as a State agency to protect the interest of the public in a regularly flowing supply of wholesome milk and is authorized, for that purpose, and that purpose only, to regulate, under proper circumstances and to a proper degree, the price of milk. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

The Fourteenth Amendment to the Constitution of the United States does not forbid a state to confer upon an administrative agency the power to fix minimum and maximum retail prices to be charged for the sale of milk in grocery stores to consumers for the purpose of assuring the steady flow of an adequate supply of clean, wholesome milk from the producing farms to the consumer. State ex rel. North Carolina Milk Comm'n v. National Food

Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation and Fixing, etc.—Neither N.C. Const., Art. I, § 32, nor Art. I, § 19, forbids the legislature of this State to confer upon the Milk Commission authority to fix a uniform rate for the transportation of milk from the farm to the processing plant so as to enable the producers of milk to secure a fair price for their product. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Regulation of Competition among Retail Grocery Stores Not Intended. — The Milk Commission was not established as an agency to regulate competition among retail grocery stores per se. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

Sections of Milk Marketing Order No. Two Held Constitutional.—Sections IV-A-1, IV-B-2, IV-C-1, IV-C-2, IV-E-1A, V-C-2, and V-C-4 of Milk Marketing Order No. Two of the North Carolina Milk Commission were held not to constitute a burden on interstate commerce, conflict with federal regulation of interstate commerce as provided in the Capper-Volstead Act, deny equal protection of the law and due process of law, or impair the obligations of contract. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

§ **106-266.9. Distributors to be licensed; prices and practices of distributors regulated.**—No distributor in a market in which the provisions of this Article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this Article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this Article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this Article. No distributor shall violate the prices as established by or filed with the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give 10 days' notice by certified mail to the Commission and every licensed distributor in each marketing area affected prior to the effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products and which do not maintain or control directly or indirectly a milk processing plant. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4; 1963, c. 797, ss. 2, 4, 4½; 1971, c. 779, s. 1.)

§ **106-266.10. Licenses for distributors and subdistributors.**—An application to the Commission for a license to operate as a distributor or subdistributor shall be made by mail or otherwise within 30 days after the provisions of this Article become effective in a market, and as to any distributor or subdistributor thereafter beginning business, before such distributor or subdistributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for that purpose. Each distributor shall cooperate with the Commission in seeing to it that its subdistributors are informed concerning, and comply with, the provisions of this Article and the rules and regulations duly adopted by the Commission. (1953, c. 1338, s. 5; 1971, c. 779, s. 1.)

§ 106-266.11. Annual budget of Commission; collection of monthly assessments.—The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the distributors in the form of monthly assessments. The assessments so levied shall not exceed four cents (4¢) per 100 pounds of milk handled. One half of any such assessment shall be deducted from funds owed to a producer or any association of producers. (1953, c. 1338, s. 6; 1971, c. 779, s. 1.)

§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer.—All receipts from assessments collected under this Article shall be paid by the Commission to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of an account to be known as the "Milk Commission Account" and such an amount as may be necessary, and no more, is hereby appropriated out of this Milk Commission Account, for the payment of all expenses incurred by the Commission in administering and enforcing this Article. The Commission shall require a distributor to make such deductions from funds owed to a producer as authorized by the producer. (1953, c. 1338, s. 7; 1971, c. 779, s. 1.)

§ 106-266.13. Injunctive relief.—In the event of violation of any provisions of this Article, or order promulgated under the provisions thereof, in addition to any other remedy, the Commission may apply to any court of record in the State of North Carolina for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist. (1953, c. 1338, s. 10; 1971, c. 779, s. 1.)

Applied in State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§ 106-266.14. Penalties.—Any person violating any provisions of this Article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than 30 days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this Article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11; 1971, c. 779, s. 1.)

§ 106-266.15. Appeals.—(a) Any person aggrieved by an order of the Commission revoking or suspending the license of a distributor or producer-distributor, or refusing to grant a license or to reissue a license or to transfer a license from one person to another, or by any action, rule, regulation, or order of the Commission applying only to a particular person (as distinguished from rules and regulations of general application), may have such order reviewed upon appeal to the superior court as provided in this subsection (a). Any such aggrieved person may within 40 days after the effective date of such action, rule, regulation, or order, appeal therefrom to the superior court. No such appeal shall act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before the expiration of 40 days, such an aggrieved person shall file written notice of appeal with the Commission and within 10 days after receipt of said written notice of appeal, it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of the county in which the violation occurred. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission v. (here insert name of appellant)," and said cause shall be placed on the civil docket of the superior court of said county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the Court of Appeals.

(b) The provisions of Article 33 of Chapter 143 of the General Statutes of North Carolina relating to "Judicial Review of Decisions of Certain Administrative Agencies" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order of the Commission, fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by an order promulgating rules and regulations affecting the milk industry as a whole, or by any other order, action, rule, or regulation of the Commission of general application. In the event more than one person files a petition for judicial review of the same order, action, rule, or regulation, the cases shall be consolidated for hearing in the superior court. (1953, c. 1338, s. 12; 1969, c. 44, s. 67; 1971, c. 779, s. 1.)

Right of Appeal and Hearing De Novo.—A person aggrieved by a decision of the Commission in North Carolina has a right of appeal and to be heard de novo in the superior court. Southeast Milk Sales Ass'n v. Swaringen, 290 F. Supp. 292 (M.D.N.C. 1968).

§ **106-266.16. Saving clause.**—No provisions of this Article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1953, c. 1338, s. 13; 1971, c. 779, s. 1.)

§ **106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.**—The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this Article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this Article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this Article are hereby repealed to the extent necessary for the full operation of this Article. No provisions of this Article shall be deemed in conflict with Articles 28 and 28A of Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict with the authority granted to county, city-county and district boards of health by G. S. 130-19, 130-20, 130-66, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the State Board of Health by G.S. 130-3 to make sanitary inquiries and investigations. (1953, c. 1338, s. 14; 1971, c. 779, s. 1.)

§ **106-266.18. Limitations upon power of Commission.**—Nothing in this Article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers, nor the power to restrict the marketing area of any producer. (1953, c. 1338, s. 14½; 1971, c. 779, s. 1.)

§ **106-266.19. Sale below cost to injure or destroy competition prohibited.**—The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited; and the offering for sale of milk by a retailer at below-cost prices to induce the public to patronize his store, or what is commonly known in the trade as using milk as a "loss leader" is also hereby prohibited. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or subdistributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, or that it was not used as a "loss leader" or to induce the public to patronize his store, shall be upon the person charged with a violation of this section. As used herein the term "cost" shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. In determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indirectly reducing the price received by the distributor or producer-distributor or retailer involved. The prima facie case of a violation of this section, made by proof of sale below cost, may be rebutted by proof of any of the following facts:

(1) The merchandise was damaged, or
(2) The milk was sold upon the final liquidation of a business, or
(3) The milk was sold to an organized charity or to a relief agency, or
(4) The milk was sold by an officer acting under the direction of any court. (1955, c. 406, s. 1; 1959, c. 1021; 1965, c. 936, s. 2; 1971, c. 779, s. 1.)

Constitutionality.—The provisions of this section making proof of the sale of milk by a retailer below cost prima facie evidence of a purpose to injure, harass or destroy competition in the marketing of milk, is not beyond the constitutional power of the legislature. State ex rel. North Carolina Milk Comm'n v. National Food Stores, Inc., 270 N.C. 323, 154 S.E.2d 548 (1967).

§§ **106-266.20, 106-266.21:** Repealed by Session Laws 1971, c. 779, s. 1.

Revision of Article.—See same catchline under § 106-266.6.

ARTICLE 30.

Board of Crop Seed Improvement.

§ 106-273. North Carolina Crop Improvement Association.

State Government Reorganization.—The Board of Crop Seed Improvement was transferred to the Department of Agriculture by § 143A-64, enacted by Session Laws 1971, c. 864.

ARTICLE 31.

North Carolina Seed Law.

§ 106-277. Purpose.

Applied in Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ **106-277.2. Definitions.**—As used in this Article, unless the context clearly requires otherwise:

(6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who labels seeds, as required in this Article in G.S. 106-277.5(10).

(23) The term "official certifying agency" means
  a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or

b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under a.

(36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(40) "Blend"—A mechanical combination of varieties identified by a blend designation in which each component variety is equal to or above the minimum standard germination for its class; which is always present in the same percentage in each lot identified by the same "blend" designation; and for which research data supports an advantage of the "blend" over the singular use of either component variety. "Blend" designations shall be treated as variety names.

(41) "Brand"—An identifying numeral, letter, word, or any combination of these, used with the word "brand" to designate source of seeds. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182; 1971, c. 637, s. 1.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, substituted "labels seeds, as required in this Article in G.S. 106-277.5(10)" for "tags or labels seed" in subdivision (6), rewrote subdivision (23), deleted "Dixie 82 Corn" following "for example," in subdivision (36) and added subdivisions (40) and (41).

Only the introductory paragraph and the subdivisions changed or added by the amendment are set out.

§ 106-277.4. Labels for treated seeds; coloring of seeds treated with poisonous substance.—(a) All seeds which are treated, as defined in this Article, shall be labeled to show the following information on a separate label, or on the same label as used for other information (purity, germination, etc.) required by this Article, or on the container of seed.

(1) A word or statement in type no smaller than eight points indicating that the seed has been treated.

(2) The commonly accepted coined, chemical (generic) or abbreviated chemical name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight points.

(3) A caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals.

(4) All seeds treated with a poisonous substance, if the amount remaining with the seed is in excess of a tolerance recognized by the U.S. Department of Agriculture, or treatment for which no tolerance or exemption from tolerance is recognized by the U.S. Department of Agriculture, shall be conspicuously colored to prevent their subsequent inadvertent use for purposes other than for seeding.

(1971, c. 637, s. 2.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, added subdivision (4) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 106-277.5. Labels for agricultural seeds.—Agricultural seeds sold, offered or exposed for sale, or transported for sale within this State shall be labeled to show the following information:

(1) The commonly accepted name of the kind and the variety, or kind and the phrase "variety not stated" for each agricultural seed component,

in excess of five percent (5%) of the whole, and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Second generation from hybrid seeds, if sold, shall be labeled "second generation (of the parent), variety not stated." "F" designations on labels, unless used as a part of a variety name, will refer only to size and shape of corn seeds.

(10) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 3.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, rewrote subdivision (1), deleted "or code designation" following "address" in the first sentence of subdivision (10) and added the second sentence of subdivision (10).

As subdivisions (2) through (9) were not changed by the amendment, they are not set out.

§ **106-277.6. Labels for vegetable seeds in containers of one pound or less.**—Labels for vegetable seeds in containers of one pound or less shall show the following information:

(5) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182; 1971, c. 637, s. 4.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, deleted "the" preceding "person," and inserted "offers" in the first sentence in subdivision (5) and added the second sentence of subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (5) are set out.

§ **106-277.7. Labels for vegetable seeds in containers of more than one pound.**—Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

(6) Name and address of person who labeled said seed or who sells, offers or exposes said seed for sale within this State. If the seeds are labeled by the shipper for a consignee within this State, the shipper may use his approved code designation with the name and address of the consignee.

(1971, c. 637, s. 5.)

Editor's Note. — The 1971 amendment, effective Oct. 1, 1971, deleted "or code designation" following "address" and "the" preceding "person" in the first sentence of subdivision (6) and added the second sentence of subdivision (6).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (6) are set out.

§ **106-277.9. Prohibitions.**—It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:

a. Unless a seed license has been obtained in accordance with the provisions of this Article.

b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt after a public hearing, following public notice, rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.

d. Pertaining to which there has been a false or misleading advertisement.

e. Consisting of or containing prohibited noxious-weed seeds.

f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.

g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.

h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.

i. Pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.

j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.

l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.

m. Unless it conforms to the definition of a "lot."

n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.

o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.

p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.

q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name other than a registered trade mark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.

s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).

(1971, c. 637, s. 6.)

Editor's Note.—The 1971 amendment, effective Oct. 1, 1971, added the proviso to paragraph b, added "or treated and not conspicuously colored" to paragraph h, substituted "hybrid or blend of seeds" for "or hybrid" in paragraph n and added paragraphs q, r and s to subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory clause and subdivision (1) are set out.

§ 106-277.10. Exemptions.

Mislabeled Seed.—The failure of a seed company to notify a customer, after receiving complaints from other customers that tomato seeds delivered to the customer were mislabeled, did not constitute negligence where the evidence disclosed that the defendant kept no records of the particular source of seed used to fill a given order, there being no duty to maintain such records, and defendant being unable to notify the customer in the absence of such data. Gore v. George J. Ball, Inc., 10 N.C. App. 310, 178 S.E.2d 237 (1971).

§ 106-277.28. Fees for tags, stamps and licenses.

(1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each, official North Carolina seed analysis tags or stamps and shall attach a tag (or stamp on the seedman's label) to each container holding ten pounds or more of seed; provided, however, that a seed dealer or grower who sells only seed lots originated by his company may request to pay these applicable fees through the reporting system prescribed in subdivision (3) hereof; provided, further, that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.

(3) A seed dealer or grower who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to report the quantity of seed sold and to pay the fees applicable under G.S. 106-277.28 (1) in lieu of attaching an official North Carolina tag or stamp to each container of seeds weighing ten pounds or more.

Upon granting authority, the Commissioner of Agriculture shall require each seed dealer or grower to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold from each distribution point in the State. Such records shall be available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within ten days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights be false, the Commissioner may revoke the authority to use the reporting system. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture.

In order to guarantee faithful performance with the provisions of this section, each seed dealer or grower, before being granted a permit to use the reporting system, shall deposit with the Commissioner cash in the amount of five hundred dollars ($500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars ($500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, inserted the present first proviso in subdivision (1) and added subdivision (3).

As only subdivisions (1) and (3) were affected by the amendment, the rest of the section is not set out.

§ 106-277.29. Investigation committee; appointment; duties; authority.—(a) When any farmer believes that he has been damaged by the failure of agricultural or vegetable seed to produce or perform as represented by the label attached to such seed as required by G.S. 106-277.3, such farmer may make a sworn complaint against the dealer from whom such seeds were purchased, alleging the damages sustained, or to be sustained, and file same with the Commissioner of Agriculture within 10 days after alleged defect or violation becomes apparent and the farmer shall send a copy of said complaint to said dealer by United States registered mail. A filing fee of ten dollars ($10.00) shall be paid to the Commissioner of Agriculture with each complaint filed. Within 10 days after receipt of a copy of the complaint, the dealer may file with the Commissioner of Agriculture his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(b) Any seed dealer against whom suit is brought in any court, state or federal, by a farmer who alleges that he has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the investigating committee.

(c) The Commissioner of Agriculture shall refer the complaint and the answer thereto to the investigation committee provided in this Article for investigation, findings and recommendations on the matters complained of.

(d) The Commissioner of Agriculture shall appoint an investigation committee composed of five members, one each to be appointed upon the recommendation of the following: Director of the North Carolina Agricultural Experiment Stations, N.C. State University; Director of the North Carolina Agricultural Extension Service, N.C. State University; and President of the North Carolina Seedmen's Association. The other two members shall be appointed by the Commissioner of Agriculture. One of the members appointed by the Commissioner of Agriculture must be a farmer who is not connected in any way in selling seeds at retail or wholesale. Each member shall continue to serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(e) The purpose of the investigation committee is to assist farmers and agricultural seed dealers in determining the facts relating to matters alleged in complaints made by farmers against dealers. The committee may recommend money damages be paid the farmer as a result of alleged failure of seeds to produce as represented by the label on the seed container.

(f) The investigation committee may be called into session by the Commissioner of Agriculture at his discretion or upon the direction of the chairman to consider matters referred to it by the Commissioner of Agriculture.

(g) When the Commissioner of Agriculture refers to the investigation committee any complaint made by a farmer against a dealer, said committee shall make a full and complete investigation of the matters complained of, and at the conclusion of said investigation, report its findings to the Commissioner of Agriculture. Upon receipt of same, the Commissioner of Agriculture shall transmit the findings and recommendations of the investigation committee to the farmer and to the dealer by United States registered mail. Neither the farmer nor the dealer shall be bound by the recommendations of the investigation committee.

(h) In conducting its investigation, the investigation committee is authorized:

(1) To examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling and selling operation of the seed alleged to be faulty;

(2) To grow to production a representative sample of the alleged faulty seed through the facilities of the State, under the supervision of the Commissioner of Agriculture when such action is deemed by the committee to be necessary;

(3) To hold informal hearings at a time and place directed by the chairman of the committee upon reasonable notice to the farmer and the dealer;

(4) To seek evaluations from authorities in allied disciplines, when deemed necessary.

(i) The committee shall keep a record of its activities and reports on file in the North Carolina Department of Agriculture.

(j) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations. (1971, c. 637, s. 7.)

Editor's Note. — Session Laws 1971, c. 637, s. 8, makes the act effective Oct. 1, 1971.

ARTICLE 31A.

Seed Potato Law.

§ **106-284.6. Purposes; definitions and standards.**—In order to improve farming in North Carolina and to enable potato growers to secure higher quality Irish potatoes and sweet potatoes and parts thereof for the purpose of propagation, and in order to prevent the spread of diseases affecting the future stability of the potato industry and the general welfare of the public, the following definitions and standards are hereby adopted:

"Certified" sweet potatoes and Irish potatoes and parts thereof for propagation uses shall mean sweet potatoes and Irish potatoes and parts thereof which conform to the standards adopted by the State Board of Agriculture, which shall conform to the standards fixed by the International Crop Improvement Association in classifying and determining what shall constitute "certified" potatoes for propagation uses.

Irish potatoes and sweet potatoes, when the same are intended for propagation purposes, shall mean Irish and sweet potatoes which conform to the standards of the U.S. Department of Agriculture for "U.S. No. 1" potatoes except that Irish and sweet potatoes which have no serious damage from sunburn, hollow heart and growth cracks shall be deemed to meet the requirements of this Article. "Serious damage" as used herein shall be defined as defined in the U.S. Standards for Potatoes. (1947, c. 467, s. 2; 1971, c. 1187, s. 1.)

Editor's Note. — The 1971 amendment, in the first sentence of the third paragraph, deleted "U.S. No. 1" at the beginning of the sentence, substituted "and" for "and/or" in two places, deleted "to be used" preceding "for propagation purposes," substituted "except that Irish and sweet potatoes which have no serious damage from sunburn, hollow heart and growth cracks shall be deemed to meet the requirements of this Article" for "when the same are intended to be used for propagation purposes." The amendment also added the second sentence.

§ 106-284.7. Unlawful to sell seed potatoes not conforming to standards; rules and regulations.—It shall be unlawful for any person, firm or corporation to pack for sale, offer or expose for sale, sell, ship into this State, or accept or receive in this State for propagation purposes, or plant in this State, any Irish potatoes, sweet potatoes or parts thereof which do not conform to the standards set out in G.S. 106-284.6.

The State Board of Agriculture is hereby authorized to make such reasonable rules and regulations as may be necessary to carry out the purposes of this Article. (1947, c. 467, s. 3; 1971, c. 1187, s. 2.)

Editor's Note. — The 1971 amendment rewrote the first paragraph.

§ 106-284.8. Employment of inspectors; prohibiting sale.—The Board of Agriculture is authorized to employ qualified inspectors to assist in the enforcement of laws and regulations affecting the distribution and sale of Irish potatoes and sweet potatoes and parts thereof intended for propagation purposes, and may prohibit the sale or use for propagation purposes of such potatoes which fail to meet the standards set out in § 106-284.6, and which have not been produced and labeled in accordance with the provisions of this Article or rules and regulations adopted pursuant thereto. (1947, c. 467, s. 4; 1971, c. 1187, s. 3.)

Editor's Note. — The 1971 amendment inserted "or use" near the middle of the section.

§ 106-284.9. Inspection; "stop-sale" orders; sale for other purposes than seed; use of other than sale certification tags; notice required.

(b) When the Commissioner or his authorized agent finds Irish potatoes and sweet potatoes or parts thereof offered or exposed for sale or held for the purpose of propagation in violation of any provision of this Article or any rule or regulation adopted pursuant thereto, he shall issue and deliver a written order to the owner or custodian of any such potatoes prohibiting the sale or use of such potatoes for propagation purposes and it shall be unlawful for anyone, after receipt of such order, to use, sell or dispose of such potatoes for propagation purposes.

(c) When any Irish or sweet potatoes are found to be in violation of this Article, the owner or person in whose possession such potatoes are found shall be required to furnish the Commissioner evidence acceptable to him that the potatoes are or will be disposed of for purposes other than propagation.

(1971, c. 1187, s. 4.)

Editor's Note. — The 1971 amendment so changed subsections (b) and (c) as to make a detailed comparison impracticable.

As the rest of the section was not affected by the amendment, only subsections (b) and (c) are set out.

§ **106-284.10. Authority to permit sale of substandard potatoes.**—Notwithstanding any other provision of this Article, the Commissioner is authorized, in his discretion, when the public necessity, welfare, economy or an emergency situation requires, to permit, for such time as he deems necessary, the shipment into the State, sale and propagation in the State of potatoes which do not meet the standards contained in G.S. 106-284.6 but which meet such other lower standards as the Commissioner shall by regulation require.

The Commissioner of Agriculture may permit any person, firm or corporation to receive Irish and sweet potatoes or parts thereof, which are below the standards set forth in G.S. 106-284.6, for experimental or scientific purposes, provided written permission has been obtained from the Commissioner prior to the receipt of said Irish and sweet potatoes or parts thereof. (1947, c. 467, s. 6; 1971, c. 1187, s. 5.)

Editor's Note. — The 1971 amendment so changed the first paragraph as to make a detailed comparison impracticable. The amendment also added the second paragraph.

§ **106-284.11. Sale of potatoes by grower to planter with personal knowledge of growing conditions.**—Nothing in this Article shall prohibit the sale or use for propagation purposes in this State of Irish or sweet potatoes or parts thereof grown in any state when sold by the grower thereof to a planter having personal knowledge of the conditions under which such potatoes were grown. (1947, c. 467, s. 7; 1971, c. 1187, s. 6.)

Editor's Note. — The 1971 amendment inserted "or use" and substituted "in any" for "within this."

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ **106-304. Proclamation of livestock and poultry quarantine.**—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock and poultry from any state where there is known to prevail contagious or infectious diseases among the livestock and poultry of such state. (1915, c. 174, s. 1; C. S., s. 4871; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "and poultry" in two places in the section.

§ **106-305. Proclamation of infected feedstuff quarantine.**—Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man, livestock and poultry. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "and poultry" in the first sentence and substituted "livestock and poultry" for "or livestock" at the end of the second sentence.

§ **106-306. Rules to enforce quarantine.**—Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock and poultry in this State. (1915, c. 174, s. 3; C. S., s. 4873; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "and poultry" near the end of the section.

§ 106-307. Violation of proclamation or rules.—Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "not in excess of five hundred dollars ($500.00)" and "up to six months, or both fined and imprisoned."

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.—The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1.)

Editor's Note.—

The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, inserted "and poultry" near the end of the first sentence.

§ 106-307.2. Reports of infectious disease in livestock and poultry to State Veterinarian.—All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock and poultry. (1943, c. 640, s. 2; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, added "and poultry" at the end of the section.

§ 106-307.3. Quarantine of infected or inoculated livestock.—Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease may be quarantined by the State Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or other organism are subject to quarantine at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer serum or vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, substituted "may" for "shall" near the middle of the first sentence, inserted "other" preceding "organism" and substituted "are subject to quarantine" for "shall be quarantined by the person inoculating same" in the second sentence and substituted "serum or" for "virus or serum" in the proviso at the end of the section.

§ 106-307.4. Quarantine of inoculated poultry.—All poultry that are inoculated with a product containing a living virus or other organism capable of causing disease shall be quarantined at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture. Provided nothing herein contained shall be construed as preventing anyone entitled to administer vaccines under existing laws from continuing to administer same. (1969, c. 606, s. 1.)

Editor's Note.—This section is new with the 1969 act. The section formerly numbered 106-307.4 is now § 106-307.5. Session Laws 1969, c. 606, s. 3, makes the act effective ninety days after ratification. The act was ratified May 27, 1969.

§ 106-307.5. Livestock and poultry brought into State.—All livestock and poultry transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4; 1969, c. 606, s. 1.)

Editor's Note. — Session Laws 1969, c. 606, ratified May 27, 1969, and made effective ninety days after ratification, renumbered this section, which was formerly § 106-307.4. The 1969 act also inserted "and poultry" near the beginning of the section. The section formerly numbered 106-307.5, and relating to appropriations for control of hog cholera, etc., was eliminated by the 1969 act.

§ 106-307.6. Violation made misdemeanor.—Any person, firm or corporation who shall violate any provisions set forth in G.S. 106-307.1 to G.S. 106-307.5 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars ($500.00) or imprisoned up to six months, or both fined and imprisoned, in the discretion of the court. (1943, c. 640, s. 6; 1969, c. 606, s. 1.)

Editor's Note. — The 1969 amendment, ratified May 27, 1969, and made effective ninety days after ratification, substituted "106-307.5" for "106-307.4" and rewrote the provisions relating to punishment.

§ 106-307.7. Diseased livestock running at large. — Whenever the State Veterinarian is informed or reasonably believes that certain livestock is infected with or has been exposed to any contagious or infectious disease, that such livestock is running at large and that such livestock cannot be captured with the exercise of reasonable diligence, the State Veterinarian shall have authority to direct the appropriate sheriff or other proper officer to destroy such livestock in a reasonable manner and such sheriff or other officer shall make diligent effort to destroy such livestock. (1971, c. 676.)

Part 3. Hog Cholera.

§ 106-322.2. Destruction of swine affected with or exposed to hog cholera; indemnity payments.—If it appears in the judgment of the State Veterinarian to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with or exposed to such disease, the State Veterinarian is authorized to order said swine destroyed or slaughtered, notwithstanding the wishes of the owners of said swine, provided that if the owner contests the diagnosis of hog cholera he shall be entitled to a review of the case by a licensed practicing veterinarian, the State Veterinarian, or his authorized representative, and the federal inspector in charge, or his authorized representative, to determine that a diagnosis of hog cholera was arrived at by the use of accepted, standard diagnostic techniques. The State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one half of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feed lot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twenty-five dollars ($25.00) for any grade swine nor more than one hundred dollars ($100.00) for any purebred swine and subject to available State funds. The procedure for appraisal, disposal and salvage of slaughtered or destroyed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals provided, however, that the appraisal may be made by the owner, or his representative, and the State Veterinarian, or his authorized representative, when agreement on the appraised value of the swine can be made; provided, further, that swine which entered the State thirty days or more before developing symptoms of hog cholera may be appraised in the same manner as swine which originate in North Carolina.

For the purposes of this section, "purebred swine" shall mean any swine upon which a certificate of pure breeding has been issued by a purebred swine association, or swine not more than twelve months of age eligible to receive such a certificate. (1963, c. 1084, s. 1; 1967, c. 105; 1969, c. 525, ss. 1, 2.)

Editor's Note.—The 1967 amendment rewrote this section.

The 1969 amendment substituted "one half" for "one third" near the beginning of the second sentence of the first paragraph and increased the maximum compensation in that paragraph from $12.50 for any grade swine and $25.00 for any purebred swine to $25.00 for any grade swine and $100 for any purebred swine. The amendment also added the second paragraph and the two provisos at the end of the first paragraph.

§ 106-322.3. When indemnity payments not to be made.—No payments shall be made for any swine slaughtered in the following cases:

(1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;

(2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;

(3) For swine in a herd in which hog cholera vaccine has been used illegally on one or more animals in the herd;

(4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;

(5) Swine belonging to the United States or the State of North Carolina;

(6) Swine brought into the State in violation of State laws or regulations;

(7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;

(8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;

(9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;

(10) Where the owner has failed to submit the reports required by the United States and North Carolina Departments of Agriculture for animals on which indemnity is paid under article 34;

(11) Swine purchased by a buying station for slaughter which are not slaughtered within ten days of purchase. (1969, c. 525, s. 2½.)

Part 4. Compensation for Killing Diseased Animals.

§ 106-323. State to pay part of value of animals killed on account of disease.—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and paratuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and paratuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twenty-five dollars ($25.00) for any grade animal nor more than one hundred dollars ($100.00) for any purebred animal; provided further, that the State indemnity shall not be in excess of the indemnity payments made by the federal government. In the case of horses or mules destroyed for glanders to pay one half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2; 1969, c. 525, s. 3.)

Editor's Note. — The 1969 amendment increased the maximum indemnity payments from $12.50 for any grade animal and $25.00 for any purebred animal to $25.00 for any grade animal and $100.00 for any purebred animal. The amendment also added the second proviso to the first sentence.

Part 7. Rabies.

§ 106-381. Confinement or leashing of vicious animals.

Ordinance Valid.—An ordinance of a city making it unlawful to keep a dog which habitually or repeatedly chases, snaps at, attacks or barks at pedestrians, bicycles or vehicles is a valid exercise of the city's police power. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

To safeguard and promote the public health, safety and convenience, municipal power to regulate the keeping and licensing of dogs within the corporate area is generally recognized, and ordinances regulating and requiring them to be registered, licensed, and at times muzzled and prevented from going at large, are within the police powers usually conferred upon the local corporation. Such ordinances are authorized by virtue of general powers and the usual general welfare clause. Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Evidence Insufficient to Show Dog "Vicious".—Evidence that a small dog frequently dashed into the street to bark at and pursue motorcycles, automobiles, and other noisy vehicles is not sufficient to justify classifying him as a "vicious" animal and does not make him "a menace to the public health." Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966); Gray v. Clark, 9 N.C. App. 319, 176 S.E.2d 16 (1970).

Canine courage in a contest for the championship of the neighborhood, together with determination to remain in possession of the field of battle "whence all but him had fled," is not evidence of a vicious character within the meaning of this section. Sink v. Moore, 267 N.C. 344, 148 S.E.2d 265 (1966).

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.—It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1; 1967, c. 511.)

Revision of Part 8.—Session Laws 1967, c. 511, rewrote part 8 of this article, designating the sections therein as §§ 106-388 to 106-398. Prior to the 1967 act this part consisted of §§ 106-388 to 106-399.

Session Laws 1967, c. 511, was ratified May 17, 1967, and made effective ninety days after ratification.

§ 106-389. Brucellosis defined; program for vaccination; sale, etc., of vaccine; cooperation with the United States Department of Agriculture.—Brucellosis shall mean the disease wherein an animal is infected with Brucella organisms (including Brucella Abortus, B. Melitensis and B. Suis), irrespective of the occurrence or absence of abortion or other symptoms. An animal shall be declared affected with brucellosis if it is classified as a reactor to a serological test for the disease, or if the Brucella organism has been found in the body, its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves in accordance with the recommendations of the Brucellosis Committee of the United States Livestock Sanitary Association, and approved by the United States Department of Agriculture, when in his opinion vaccination is necessary for the control and eradication of brucellosis. Vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture. Above the ages designated by regulation of the Board of Agriculture, all such vaccinates classified as reactors on an official test for brucellosis, shall be considered as affected with brucellosis and shall be branded with the letter "B" in accordance with § 106-390. It shall be unlawful to sell, offer for sale, distribute, or use brucellosis vaccine or any product containing live Brucella organisms, except as provided for in regulations adopted by the Board of Agriculture.

The control and eradication of brucellosis in the herds of North Carolina shall be conducted as far as available funds will permit, and in accordance with the rules and regulations made by the Board of Agriculture. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of brucellosis. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119; 1967, c. 511.)

§ 106-390. Blood sample testing; diseased animals to be branded and quarantined; sale; removal of identification, etc.—All blood samples for the brucellosis test shall be drawn by persons whose qualifications are set by regulation of the Board of Agriculture. Animals from which blood is collected for a brucellosis test shall be identified by numbered ear tag, tattoo, or in some other manner approved by the Commissioner of Agriculture. It shall be the duty of the person who collects the blood sample, or other designated authorized person, to brand all cattle affected with brucellosis with the letter "B" on the left hip or jaw, not less than three or more than four inches high, tag such animals with an approved brucellosis reactor ear tag, and report the same to the State Veterinarian. It shall be the duty of the person owning said cattle at the time of said testing to assist with and cooperate with the person testing said cattle. Cattle affected with brucellosis shall be quarantined and slaughtered at a State or federally inspected slaughter plant within ten (10) days after branding and tagging; provided the State Veterinarian, in his discretion, may grant an extension of time for said slaughter not to exceed thirty (30) days and; provided further that the Commissioner of Agriculture may allow a branded and tagged animal having unusual breeding value to be held for a period of time determined by him under conditions of isolation and quarantine prescribed by the State Veterinarian. Animals believed by the State Veterinarian or his authorized representative to have been exposed to brucellosis, or animals classified as suspects, shall be quarantined on the owner's premises or at such other place as is mutually agreeable to the owner and the State Veterinarian until the quarantine is removed in accordance with law or until the animal is disposed of in accordance with law. No animal affected with, or exposed to, brucellosis shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same made to the State Veterinarian.

All cattle, swine, sheep, goats or other animals subject to infection by Brucella organisms, sold, or offered at public sale, except for immediate slaughter, shall be subject to test requirements established by the Board of Agriculture.

No ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for the purpose of brucellosis testing, including testing at slaughter plants, shall be removed from the animal without authorization from the State Veterinarian or his authorized representative. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489; 1967 c. 511; 1969, c. 465.)

Editor's Note.—The 1969 amendment rewrote the first paragraph.

§ 106-391. Civil liability of vendors.—Any person, or persons, who knowingly sells, or otherwise disposes of, to another, an animal affected with brucellosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4; 1967, c. 511.)

§ **106-392. Sales by nonresidents.**—When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-398 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5; 1967, c. 511.)

§ **106-393. Duties of State Veterinarian; quarantine of animals; required testing.**—When the State Veterinarian receives information, or has reasonable grounds to believe, that brucellosis exists in any animal, or animals, or that it has been exposed to the disease, he shall promptly cause said animal, or animals, to be quarantined on the premises of owner or such other place as is mutually agreeable to the owner and the State Veterinarian or his authorized representative. Said animals shall not be removed from premises where quarantined until quarantine has been released by State Veterinarian or his authorized representative. A permit to move such infected or exposed animals to immediate slaughter may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations to provide for compulsory testing of animals for brucellosis. (1937, c. 175, s. 6; 1967, c. 511.)

§ **106-394. Cooperation of county boards of commissioners.** — The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and United States departments of agriculture in the eradication of brucellosis in their respective counties. (1937, c. 175, s. 7; 1967, c. 511.)

§ **106-395. Compulsory testing.**—Whenever a county board of commissioners shall cooperate with the State and the United States governments, as provided for in §§ 106-388 to 106-398, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle. (1937, c. 175, s. 8; 1967, c. 511.)

§ **106-396. Authority to promulgate and enforce rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-398, and for the effective control and eradication of brucellosis. (1937, c. 175, s. 10; 1967, c. 511.)

§ **106-397. Violation made misdemeanor.**—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-398, or any rule or regulation duly established pursuant to this article by the State Board of Agriculture or any inspector who shall wilfully fail to comply with any provisions of §§ 106-388 to 106-398, shall be guilty of a misdemeanor. (1937, c. 175, s. 11; 1967, c. 511.)

§ **106-398. Punishment for sale of animals known to be infected, or under quarantine.**—Any person or persons who shall wilfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with brucellosis, or under quarantine because of suspected exposure to brucellosis, except as provided for in §§ 106-388 to 106-398, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars ($50.00) and not more than two hundred dollars ($200.00), or imprisoned for a term of not less than 30 days or more than two years. (1937, c. 175, s. 12; 1967, c. 511.)

§ **106-399:** Repealed by Session Laws 1967, c. 511.

Revision of Part 8.—See same catchline in note under § 106-388.

Part 9. Control of Livestock Diseases.

§ 106-401. State Veterinarian authorized to quarantine.—The State Veterinarian or his authorized representative is authorized to go upon or enter any property in the State, or to stop any motor vehicle on a public or private road to examine any animal which he has reasonable grounds to believe is affected with or exposed to a contagious disease. If such person refuses to consent to such entry and examination after the State Veterinarian or his authorized representative shall have notified, in writing, the owner or person in whose custody such animal or animals are found, of his intention to enter such property and conduct such examination, the State Veterinarian or his authorized representative may petition the district court in the county where such animal or animals are found for an order authorizing such entry and examination. The State Veterinarian or his authorized representative may quarantine any animal affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and shall give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to any part of the premises on which such animal is held. Such animal is to be maintained by the owner or person in charge as provided in G.S. 106-400 through 106-405 at the owner's or person's in charge expense. No animal under quarantine shall be removed from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Such quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and such quarantine shall not be cancelled until any sick or diseased animal has been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2; 1971, c. 724.)

Editor's Note. — The 1971 amendment added the first and second sentences and rewrote the remainder of the section.

§ 106-401.1. Inspection and quarantine of poultry.—The State Veterinarian, or his authorized representative, is hereby authorized to go upon or enter any property in the State, or to stop any motor vehicle, to examine any poultry which he has reason to believe are affected with or exposed to a contagious disease. He or his authorized representative is authorized to quarantine any poultry affected with or exposed to a contagious disease, or injected with or otherwise exposed to any material capable of producing a contagious disease and to give public notice of such quarantine by posting or placarding with a suitable quarantine sign the entrance to or any part of the premises on which such poultry are held. Said poultry are to be maintained by the owner or person in charge as provided for in G.S. 106-400 to G.S. 106-405 at the owner's expense. The quarantine provision hereof shall not apply to those diseases which are endemic in the State and for which adequate preventive and control measures are not available. No poultry under quarantine shall be moved from the place of quarantine except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until cancelled by official written notice from the State Veterinarian or his authorized representative and shall not be released or cancelled until the sick or dead poultry have been properly disposed of and the premises have been properly cleaned and disinfected. (1969, c. 693, s. 1.)

§ 106-402. Confinement and isolation of diseased animals required.—Any animal, animals or poultry affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal, animals or poultry in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals or poultry not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals or poultry, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3; 1969, c. 693, s. 2.)

Editor's Note. — The 1969 amendment rewrote this section so as to make it applicable to poultry.

§ **106-403. Disposition of dead domesticated animals.**—It shall be the duty of the owner or person in charge of any of his domesticated animals that die from any cause and the owner, lessee, or person in charge of any land upon which any domesticated animals die, to bury the same to a depth of at least three feet beneath the surface of the ground within 24 hours after knowledge of the death of said domesticated animals, or to otherwise dispose of the same in a manner approved by the State Veterinarian. It shall be a violation of this statute to bury any dead domesticated animal closer than 300 feet to any flowing stream or public body of water. It shall be unlawful for any person to remove the carcasses of dead domesticated animals from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. The governing body of each municipality shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the municipality when the owner or owners of said animals cannot be determined. The board of commissioners of each county shall designate some appropriate person whose duty it shall be to provide for the removal and disposal, according to the provisions of this section, of any dead domesticated animals located within the limits of the county, but without the limits of any municipality, when the owner or owners of said animals cannot be determined. All costs incurred by a municipality or county in the removal of a dead domesticated animal shall be recoverable from the owner of such animal upon admission of ownership or conviction. "Domesticated animal" as used herein shall include poultry. (1919, c. 36; C. S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4; 1971, c. 567, ss. 1, 2.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, rewrote this section.

§ **106-405. Violation made misdemeanor.**—Any person or persons who shall knowingly and willfully violate any provision of G.S. 106-400 to 106-403 shall be guilty of a misdemeanor and punishable by a fine not in excess of five hundred dollars ($500.00) or imprisonment not in excess of six months, or both fine and imprisonment. (1939, c. 360, s. 6; 1969, c. 693, s. 3.)

Editor's Note. — The 1969 amendment rewrote this section.

Part 10. Feeding Garbage to Swine.

§ **106-405.1. Definitions.**

(1) "Garbage" means consisting in whole or in part of animal waste resulting from handling, preparing, cooking and consuming food, including the offal from or parts thereof; provided that the Commissioner of Agriculture or his authorized representative is empowered to exempt from this definition the waste resulting from the processing of seafood.

(1967, c. 872, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote subdivision (1).

As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

§ **106-405.2. Permit for feeding garbage to swine.**—(a) No person shall feed garbage to swine without first securing a permit therefor from the

North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be issued for a period of one year and shall be renewable on the date of expiration.

(1971, c. 566, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "issued for a period of one year" for "secured within ninety days after June 9, 1953" and "renewable on the date of expiration" for "renewed on or before the first day of July of each year" in the second sentence of subsection (a).

Session Laws 1971, c. 566, s. 3, provides: "The enforcement of this act shall be the sole responsibility of the North Carolina Department of Agriculture."

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 106-405.3. Application for permit.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of twenty-five dollars ($25.00) for each permit issued to a garbage feeder under the provisions of this part. The fees provided for in this part shall be used exclusively for the enforcement of this part.

(1967, c. 872, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, increased the fee in subsection (b) from $1.00 to $25.00.

As subsections (a) and (c) were not changed by the amendment, they are not set out.

§ 106-405.7. Inspection and investigation; maintenance of records.

(c) Any operator, manager or person in charge of a restaurant, cafe, boardinghouse, school, hospital, or other public or private place where food is served to persons other than members of the immediate family or nonpaying guests of such operator, manager, or person in charge, shall not allow or permit garbage to be removed from the premises thereof unless the person removing said garbage is in possession of a valid garbage-feeding permit issued by the North Carolina Department of Agriculture, or unless such person removing said garbage is in possession of a document from the County Department of Health wherein such garbage is located stating that the person removing said garbage is authorized to dispose of such garbage in a legal manner or unless such person removing said garbage is an employee of a municipality engaged in the regular collection of garbage for said municipality. The name and address or license number of any motor vehicle of any person removing garbage other than under authorization from the County Department of Health, the North Carolina Department of Agriculture or a municipality, shall be reported by such operator, manager or person in charge, to the State Veterinarian within five days after the first removal of such garbage is made. (1953, c. 720, s. 7; 1971, c. 566, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added subsection (c).

Session Laws 1971, c. 566, s. 3, provides: "The enforcement of this act shall be the sole responsibility of the North Carolina Department of Agriculture."

As subsections (a) and (b) were not changed by the amendment, they are not set out.

ARTICLE 35.

Public Livestock Markets.

§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.—Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of two hundred fifty dollars ($250.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall fix the date of a hearing, on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the public livestock market advisory board of the time and place of said hearing, at least 10 days before the date which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall issue a nontransferable permit to the applicant. If the Commissioner denies the application, the applicant may appeal within 10 days of notice of said denial to the Board of Agriculture which can uphold or reverse the Commissioner. If the Board of Agriculture upholds the Commissioner, the applicant may appeal to the Superior Court of Wake County under the procedures of Article 33, Chapter 143 of the General Statutes. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee. (1941, c. 263, s. 1; 1943, c. 724, s. 1; 1967, c. 894, s. 1; 1971, c. 739, s. 1.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

The 1971 amendment, effective Aug. 1, 1971, substituted "North Carolina Public Livestock Market Advisory Board" for "Commissioner" and "it" for "the Commissioner" in the second sentence of the last paragraph.

§ 106-407. Bonds required of operators; exemption of certain market operations.—The Commissioner of Agriculture shall require the owner of each public livestock market issued a permit under the provisions of G.S. 106-406 to furnish a bond acceptable to the Commissioner of not less than five thousand dollars ($5,000.00) nor more than fifty thousand dollars ($50,000.00), in the discretion of the Commissioner, to secure the performance of all obligations incident to the operation of the public livestock market operation including prompt payment to the vendors of all livestock sold at said market; provided, that, at the discretion of the Commissioner of Agriculture, a bond shall not be required of a livestock market bonded under the Federal Packers and Stockyards Act.

The term "public livestock market" as used in this article shall not be interpreted to mean any of the following:

(1) A market where horses and mules exclusively are sold;
(2) A market that sells only finished livestock to be used for immediate slaughter;
(3) A dispersal sale of livestock by a farmer, dairyman, livestock breeder, or feeder when all animals offered for sale have been owned by him at least 30 days; provided that, no more than one dispersal sale shall be held by any person, firm or corporation within any period of six month.
(4) Purebred livestock association sales and those sales where Future Farmers of America, 4-H Clubs and similar groups, State institutions, or private fairs conduct sales of livestock. (1941, c. 263, s. 2; 1967, c. 894, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.—There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before Augut 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise, shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. It shall also be the duty of the members of the Board to meet at least once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards.

The two hundred fifty dollars ($250.00) permit fee required by this article and the one hundred dollars ($100.00) annual permit fee required by this article shall be used to defray the expenses incurred by the members of the Board in the performance of their duties and enforcement of this article. No funds of the State of North Carolina shall be used to defray any expenses of the Board. All permit fees and annual renewal fees payable under the provisions of this article shall be paid into the office of the auditor of the Department of Agriculture and shall be kept by said auditor in a separate account and disbursed by him according to the provisions of this article. (1967, c. 894, s. 3.)

Editor's Note.—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

State Government Reorganization.—The Public Livestock Market Advisory Board was transferred to the Department of Agriculture by § 143A-65, enacted by Session Laws 1971, c. 864.

§ **106-407.2. Revocation of permit by Board of Agriculture; restraining order for violations.**—The permit authorizing the operation of a public livestock market may be revoked by the North Carolina Board of Agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the public livestock market shall have been given 10 days' written notice of the alleged violation and opportunity to be heard relative thereto by the North Carolina Board of Agriculture. Such revocation may be appealed to the superior court under the provisions of article 33 of chapter 143 of the General Statutes.

If any person, firm or corporation shall operate a public livestock market in violation of the provisions of this article, or the rules and regulations promulgated by the North Carolina Board of Agriculture, or shall fail to comply with the provisions of this article, or rules and regulations promulgated thereunder, a temporary or permanent restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, or his authorized representative, and the judge of the superior court shall have the same power and authority as in any other injunction proceeding, and the defendant shall have the same rights including the right of appeal, as in any other injunction proceeding heard before the superior court. (1967, c. 894, s. 4.)

Editor's Note.—Section 17, c. 894, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ **106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.**—All public livestock markets operating under this Article shall have proper facilities for handling livestock and such other equipment as specified by regulation of the North Carolina Board of Agriculture. Scales approved by the North Carolina Division of Weights and Measures shall be provided at public livestock markets where animals are bought, sold or exchanged by weight. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected in accordance with regulations promulgated by the Board of Agriculture pursuant to the authority contained in G.S. 106-416. The market shall keep a complete legible permanent record, including the use of numbered invoices, showing the name and address of the person or firm from whom all animals are received and the name and address of the person or firm to whom sold. Symbols in lieu of names shall not be used. The weight, if sold by weight, and the price paid and the price received shall be recorded on the invoice. Such records as specified in this section shall be available for inspection to the Commissioner of Agriculture or his authorized representative during regular business hours.

The sales of all livestock at livestock auction markets shall start no later than 2:00 P.M.; provided, however, the Commissioner of Agriculture shall have authority to authorize a sale to begin as late as 4:00 P.M. when the sale (i) consists solely of the sale of pigs weighing no more than 150 pounds and sold as feeder pigs, (ii) continues without interruption, and (iii) last[s] no later than 5:00 P.M. The sale of livestock shall be continuous until all are sold.

Each public livestock market operator operating under this Article shall post notice of the day(s) of sale and the starting time in a conspicuous place on the market premises. In the event of subsequent changes in day of sale or starting time, the operator shall post notice on the premises and notify the State Veterinarian in writing at least two weeks in advance of the date of change. (1941,

c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1; 1967, c. 894, s. 5; 1969, c. 983; 1971, c. 739, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

The 1969 amendment added the proviso to the first sentence of the second paragraph.

The 1971 amendment, effective Aug. 1, 1971, substituted "last no later than 5:00 P.M." for "lasts no longer than one hour" at the end of the first sentence of the second paragraph.

§ **106-408.1. Market operation fees.**—A fee of twenty-five dollars ($25.00) shall be paid by the market operator to the North Carolina Department of Agriculture for each day, or fraction thereof, a sale is held, provided that an additional maximum fee of ten dollars ($10.00) per one-half hour, or fraction thereof, shall be paid to the North Carolina Department of Agriculture for operation after 6:00 P.M. Provided further, that the Board of Agriculture may at its discretion adjust both fees for market operation within the limits set in this section. A fee to be set by the Board of Agriculture may be charged to the buyer of cattle and swine required to be tested under G.S. 106-409 and G.S. 106-410, and the amount collected used to offset the twenty-five dollar ($25.00) market operation fee. All test fees charged in excess of twenty-five dollars ($25.00) shall revert to the North Carolina Department of Agriculture and be payable within 24 hours following the close of a sale day. The starting and finishing time of each sale shall be recorded by the livestock inspector on his report of the sale. A copy of the report shall be given to the market operator or his representative following the sale. Failure to make the required payment within 24 hours following close of a sale day shall be cause for the Commissioner of Agriculture to prohibit, on 72 hours notice, further sales at the market until the account is paid in full. The operation fee shall be waived when a livestock market operator employs a licensed, accredited veterinarian approved by the State Veterinarian to be present at the market from the starting time of the sale until all livestock to be admitted to the sales barn on that sale day have entered and such work in inspection, testing and vaccination as designated by the State Veterinarian has been completed. (1971, c. 739, s. 3.)

Editor's Note. — Session Laws 1971, c. 739, s. 6, makes the act effective Aug. 1, 1971.

§ **106-409. Removal of cattle from market for slaughter and nonslaughter purposes; identification; permit needed.**—No cattle except those for immediate slaughter, shall be removed from any public livestock market except in accordance with this article and regulations adopted by the North Carolina Board of Agriculture. All cattle removed from any public livestock market for immediate slaughter, shall be identified in a manner approved by the Commissioner of Agriculture and the person removing same shall before removal sign a form in duplicate showing the number of cattle, their description, and where same are to be slaughtered or resold for slaughter. Cattle sold for slaughter shall be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughtering establishment for immediate slaughter.

(2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles cattle for immediate slaughter.

(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this article.

A "buying station" of a slaughterhouse or similar business not operating under a public livestock market permit shall not allow the removal of animals for any purpose other than that of immediate slaughter unless a written permit has been secured from the State Veterinarian or his authorized representative. This provision shall not apply to buying stations operated by feed lot operators buying animals for movement to their own feed lots.

Cattle sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No livestock market operator, or agent or employee thereof, shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s 2; 1949, c. 997, s. 2; 1967, c. 894, s. 6.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ **106-410. Removal of swine from market for slaughter and nonslaughter purposes; identification; permit needed; resale for feeding or breeding; out-of-state shipment.** — No swine, except those for immediate slaughter, shall be removed from any public livestock market except in accordance with regulations adopted by the North Carolina Board of Agriculture. All swine removed from any public livestock market for immediate slaughter shall be identified in a manner prescribed by regulation adopted by the North Carolina Board of Agriculture and the person removing same shall sign a form in duplicate showing the number of hogs, their description and where they are to be slaughtered or resold for slaughter. Slaughter hogs may be disposed of in one of the following ways:

(1) Moved directly to a recognized slaughter establishment for immediate slaughter.
(2) Sold to a dealer, bonded under the Packers and Stockyards Act, who handles hogs for immediate slaughter.
(3) Offered for resale for slaughter through a livestock auction market holding a valid permit issued under this Article.

Swine sold for immediate slaughter shall be used for no other purpose unless prior written permission has been secured from the State Veterinarian or his authorized representative. No market operator shall allow the removal of any swine from a market in violation of this section.

Swine for breeding or feeding purposes shall not be resold in a livestock market for other than immediate slaughter within 14 days of prior sale at a livestock market unless they are identified as having been previously sold swine at the time of resale. Such identification shall contain the date and place of the prior sale and shall be furnished in writing to the market operator by the seller of said swine.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4; 1967, c. 894, s. 7; 1971, c. 739, s. 5.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote all of this section except the last paragraph.

The 1971 amendment, effective Aug. 1, 1971, deleted "without vaccination and" following "North Carolina" near the beginning of the last paragraph.

§ **106-411. Regulation of use of livestock removed from market; swine shipped out of State.**—Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this article and the applicable regulations of the Department of Agriculture. It shall be a misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in § 106-409 and § 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967, c. 894, s. 8.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-412. Admission of animals to markets; quarantine of diseased animals; sale restricted; regulation of trucks, etc. — No animal known to be affected with or having visible symptoms of a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with, or exposed to, any contagious or infectious disease of animals or any animal that reacts to an official test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon written permission of the Commissioner of Agriculture or his authorized representative. All animals sold for slaughter under this provision must be moved directly to a recognized slaughter establishment with State or federal meat inspection unless written permission to do otherwise is secured from the State Veterinarian or his authorized representative. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said costs shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s 7; 1967, c. 894, s. 9.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, inserted "or having visible symptoms of" in the first sentence, substituted "an official" for "a" preceding "test" and inserted "written" preceding "permission" in the second sentence, deleted "and for immediate slaughter only" at the end of the second sentence and inserted the third sentence.

§ 106-413. Sale, etc., of certain diseased animals restricted; application of article; sales by farmers.—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease, or that the owner or person in charge or a livestock inspector or an approved veterinarian has reason to believe are so affected or exposed; provided, however, that upon written permission of the Commissioner of Agriculture or his authorized representative it shall be lawful to sell, trade, or otherwise dispose of such animals for immediate slaughter at a plant with State or federal meat inspection. The provisions of this article, including those regulations adopted by the North Carolina Board of Agriculture, shall apply to all animals sold or offered for sale on any public highway, right-of-way, street, or within one-half mile of any public livestock market, or other public place; provided, that the one-half mile provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5; 1967, c. 894, s. 10.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.—No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, rewrote this section.

§ 106-415. Cost of tests, serums, etc.—The cost of all tests, serums, vaccines and othe medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and the cost shall constitute a lien against all said animals; provided that, the Commissioner of Agriculture, by and with the consent of the Board of Agriculture, is hereby authorized to determine reasonable charges and costs for such tests, serums, vaccines, and other medical supplies; provided further, that an animal which shows a reaction to a test for brucellosis shall be automatically "no-saled" and resold for immediate slaughter and the cost of the test paid by the original seller. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269; 1967, c. 894, s. 12.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, deleted the former first, second and third sentences, relating to fees for permits and the term of permits, and added the second proviso.

§ 106-416. Rules and regulations.—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may be necessary to carry out the provisions of this Article. This power shall include, but not be confined to, the authority to designate a time after which livestock shall not be allowed to enter a sales barn on the day of a sale. (1941, c. 263, s. 11; 1967, c. 894, s. 13; 1971, c. 739, s. 4.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, added "The" at the beginning of the section and deleted "hereafter" between "may" and "be."

The 1971 amendment added the second sentence.

§ 106-417. Violation made misdemeanor; responsibility for health, etc., of animals.—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this article, shall be guilty of a misdemeanor, and shall be fined or imprisoned or both, in the discretion of the court. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6; 1967, c. 894, s. 14.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, made minor changes in punctuation.

§ 106-418. Exemption from health provisions.—The health provisions of this article shall not apply to "no-sale" cattle offered for sale at a public livestock market by a bona fide farmer who has owned them at least 60 days. (1941, c. 263, s. 12½; 1967, c. 894, s. 15.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, substituted "at a public livestock market by a bona fide farmer who has owned them at least 60 days" for "by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina."

ARTICLE 36.

Plant Pests.

§ 106-419.1. Plants, plant products and other objects exposed to plant pests.—Any plant, plant product, object or article which has been, or which the Commissioner of Agriculture or his agents have reasonable grounds to believe has been exposed to a plant pest, may be treated as a plant pest for the purposes of this Article. (1971, c. 526.)

§ 106-420.1. Agreements against plant pests. — The North Carolina Board of Agriculture is authorized to enter into agreements with any agency of the United States or any agency of another state for the eradication, suppression, control and prevention of spread of plant pests. The Commissioner of Agriculture is authorized to enter into agreements with any unit of local government in this State or any organization incorporated or unincorporated who has an interest in the control of plant pests for the eradication, suppression, control and prevention of spread of plant pests. (1971, c. 526.)

§ 106-422. Agents of Board; inspection. — The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. Any duly authorized agent of the Commissioner shall have authority to stop or cause to be stopped on any highway or other public place, by any law-enforcement officer at the request of said authorized agent of the Commissioner, any vehicle or other means of transportation that is being used, or that the representative of the Commissioner has reasonable grounds to believe is being used, to transport or move any plant, plant product or seed in violation of the provisions of this article. (1957, c. 985; 1967, c. 976.)

Editor's Note. — The 1967 amendment added the last sentence.

ARTICLE 37.

Cotton Grading.

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.—The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The North Carolina Department of Agriculture may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S., s. 4903; 1967, c. 24, s. 27.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, substituted "it" for "they" near the end of the first sentence and "North Carolina Department of Agriculture" for "above institutions" near the beginning of the second sentence.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

§ 106-427. County commissioners to cooperate.—Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904; 1967, c. 24, s. 27.)

Editor's Note. — The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either, or both, of the above-named institutions" near the middle of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

§ 106-428. Grading done at owner's request; grades as evidence.—The expert graders employed by the North Carolina Department of Agriculture, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905; 1967, c. 24, s. 27.)

Editor's Note.—The 1967 amendment, originally effective Oct. 1, 1967, substituted "the North Carolina Department of Agriculture" for "either of the above-named institutions" near the beginning of the section.

Session Laws 1967, c. 1078, amends the 1967 amendatory act so as to make it effective July 1, 1967.

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ 106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees. — The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State Warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in § 106-433 (a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to § 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under § 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433 (b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. Such bonds shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S. s. 4925(d); 1965, c. 1029, s. 5; 1969, c. 844, s. 9.)

Editor's Note.—

The 1969 amendment added the last sentence.

§ **106-446. State not liable on warehouse debts; levy on cotton or levy on grain and soybeans levied if loss is sustained.**—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision shall be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in G.S. 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose special financial benefit it is established, it is hereby provided that in the eventuality the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, the State Board of Agriculture shall have the power to make such losses on cotton good by repeating for another 12 months selected by it the special levy on ginned cotton, as prescribed in G.S. 106-435 for the two years ending June 30, 1923 and the State Board of Agriculture shall have the power to make good such losses on soybeans, corn, wheat and grain sorghum by levying an assessment of one cent (1¢) per bushel on each bushel of soybeans, corn, wheat, and grain sorghum sold by producers through commercial channels for such period of time as is necessary to pay off said loss. The assessment shall be paid by the producer of the soybeans, corn, wheat and grain sorghum to the collecting handler. The collecting handler shall be any person, firm, corporation or other legal entity who purchases soybeans, corn, wheat or grain sorghum from the producer. The collecting handler shall collect the assessment at the time he first makes any payment or any credit to the producer's account for the soybeans, corn, wheat or grain sorghum. Each collecting handler shall transmit assessment and reports on assessments to the North Carolina Department of Agriculture no later than the tenth day of the month next following the month in which the assessment was or should have been levied. The report which shall be sent to the Department of Agriculture with the assessment shall contain the following information:

(1) Date of report;
(2) Reporting period covered by report;
(3) Name and address of collecting handler;
(4) Listing of all producers from whom the collecting handler collected the

assessment, and total number of bushels of each grain for each producer on which the collecting handler collected the assessment.

Failure of the collecting handler to collect the assessment shall not relieve the collecting handler of his obligation to remit the assessment to the North Carolina Department of Agriculure. Each collecting handler required to make reports pursuant to this article shall maintain such books and records as are required by the Commissioner of Agriculture or his authorized representative, and they shall be available for inspection for at least two years beyond the 12-month period of their applicability. The North Carolina Department of Agriculture shall have authority to make reasonable rules and regulations for the collection of this assessment and for the enforcement of this section. The funds collected pursuant to this section shall be held in the State treasury to the credit of the State warehouse system and shall be a part of the guarantee fund provided for in G.S. 106-435. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10; 1967, c. 560.)

Editor's Note. —

The 1967 amendment rewrote this section.

Article 39.

Leaf Tobacco Warehouses.

§ **106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.**—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person 18 years of age or older, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ...., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1; 1971, c. 1085, s. 2.)

Editor's Note. — The 1971 amendment inserted "18 years of age or older" in the first sentence.

Article 40.

Leaf Tobacco Sales.

§ **106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.**

Interests of Warehousemen, Buyers and Sellers of Tobacco.—The warehousemen have an economic stake in the markets' operations, but the markets exist for the purpose of serving the interests of buyers and sellers of tobacco. Those interests deserve inquiry and consideration in an appraisal of any plan containing market restrictions and limitations. Robertson v. Federal Trade Comm'n, 415 F.2d 49 (4th Cir. 1969).

The very nature of leaf tobacco demands regulation of its sale, as this section recognizes and the decisions of the courts confirm. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Unfair Trade Regulations Are Subject to Correction by Federal Trade Commission, Not Courts. — The Federal Trade Commission rather than the courts has the expertise, the power, and the implements to explore and correct unfair trade regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Members Have Technical Representation Through Board.—Under this section, tobacco purchasers are, or may be, members of a board of trade. To the extent that they are, they have had technical representation through the board of trade. Roberts v. Fuquay-Varina Tobacco Bd. of Trade, 405 F.2d 283 (4th Cir. 1968).

By becoming a member of a board a person consents to be bound by its reasonable regulations. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

Regulation adjusting divisions of selling time to establish an equitable market participation did not constitute conspiracy, monopoly, or an unreasonable restraint of trade. Eagles v. Harriss Sales Corp., 368 F.2d 927 (4th Cir. 1966).

ARTICLE 44.

Unfair Practice by Handlers of Fruits and Vegetables.

§ **106-496. Protection against unfair trade practices.**—The Board of Agriculture is hereby authorized to make such rules and regulations as it deems necessary to protect producers of fruits and vegetables from loss caused by financial irresponsibility and unfair, harmful or unethical trade practices of handlers who incur financial liability for the purchase or production of fruits and vegetables. A "handler," as used herein, is a person, firm, corporation or other legal entity or his agent or employee who enters into a written contract for the purchase from or production by a producer of fruits and vegetables. (1941, c. 359, s. 1; 1971, c. 1064, s. 1.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, rewrote this section.

§ **106-497. Permits required.**—A handler of fruits and vegetables shall not enter into a written contract with a producer until he obtains a written permit from the Commissioner of Agriculture. The Board of Agriculture may prescribe by regulation the form of the application for a permit, the information to be furnished to the Commissioner by the applicant for a permit and the date for filing the application. A permit shall not be issued until the applicant files on or before the date set by the Board a written request with the Commissioner and files with the request two copies of the applicant's proposed contract. A penalty of twenty-five dollars ($25.00) shall be paid by the applicant if the application is filed after the date established by the Board and no permit shall be issued until such penalty is paid. Any penalties collected by the Commissioner shall be used to help defray the costs of administering Article 44 of Chapter 106.

This Article shall not apply to transactions by a handler with a producer on a cash basis. "Cash" as used herein shall include bank bills, checks drawn on banks and bank notes. (1941, c. 359, s. 2; 1971, c. 1064, s. 2.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, rewrote this section.

§ **106-498. Bond required.**—No permit shall be issued to a handler until such handler has furnished the Commissioner of Agriculture a bond satisfactory to the Commissioner in an amount of not less than ten thousand dollars ($10,000). The Commissioner may require a new bond or he may require the amount of any bond to be increased if he finds it necessary for the protection of the producer. Such bond shall be payable to the State and shall be conditioned upon the fulfilling of all financial obligations incurred by the handler with all producers with whom the handler contracts. Any producer alleging any injury by the fraud, deceit, wilful injury or failure to comply with the terms of any written contract by a handler may bring suit on the bond against the principal and his surety in any court of competent jurisdiction and may recover the damages found to be caused by such acts complained of. (1941, c. 359, s. 3; 1967, c. 154; 1971, c. 1064, s. 3.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, rewrote this section as previously amended in 1967.

§ 106-499. Contracts between handlers and producers; approval of Commissioner.—All contracts filed with the Commissioner by an applicant shall be approved by the Commissioner before a permit is issued. The Commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this Article. (1941, c. 359, s. 4; 1971, c. 1064, s. 4.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, rewrote the first sentence.

§ 106-500. Additional powers of Commissioner to enforce Article.—In order to enforce this Article, the Commissioner of Agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(1) To inspect or investigate transactions for the sale or delivery of fruits and vegetables to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, fruits and vegetables and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(2) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this Article or of rules, regulations, and orders made by the Board or the Commissioner. Any party disobeying any order or subpoena of the Commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the Commissioner;

(3) To issue all such rules and regulations, with the approval of the Board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this Article.

(4) This article will not apply to peanuts and corn grown under contract for seed purposes. (1941, c. 359, s. 5; 1971, c. 1064, ss. 5, 6.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, substituted "fruits and vegetables" for "farm products" twice in subdivision (1) and added subdivision (4).

ARTICLE 49.

Poultry; Hatcheries; Chick Dealers.

§ 106-539. National poultry and turkey improvement plans.—In order to promote the poultry industry of the State, the North Carolina Department of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry and turkey improvement plans. (1945, c. 616, s. 1; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "North Carolina" preceding "Department of Agriculture" where the phrase first appears and substituted "national poultry and turkey improvement plans" for "national poultry improvement plan" at the end of the section.

§ **106-540. Rules and regulations.**—After public hearing following 30 days' public notice, the North Carolina Board of Agriculture is hereby authorized to make such regulations as may be necessary to accomplish the following:

(1) Carry out the provisions of the national poultry and turkey improvement plans.
(2) Set up minimum standards for the operation of hatcheries.
(3) Regulate hatching egg dealers, chick dealers, poult dealers, and jobbers.
(4) Regulate the shipping into this State of baby chicks, turkey poults and hatching eggs.
(5) Facilitate the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ **106-541. Definitions.**—For the purpose of this article, a hatchery shall be defined as any establishment that operates hatchery equipment for the production of baby chicks or poults. A hatching egg dealer, chick dealer or jobber shall mean any person, firm or corporation that buys hatching eggs, baby chicks or turkey poults and sells or offers them for sale. The term "mixed chicks" or "assorted chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of a distinct breed. (1945, c. 616, s. 3; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ **106-542. Hatcheries, chick dealers and others to obtain permit to operate.**—No person, firm or corporation shall operate a hatchery and no chick or hatching egg dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled by the Department of Agriculture for violation of this article or the regulations promulgated thereunder by the Board of Agriculture. Any person who is refused a permit or whose permit is revoked may appeal within thirty (30) days of such refusal or revocation to the superior court of the county wherein the hatchery is or is sought to be located. (1945, c. 616, s. 4; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleted "public" preceding "hatchery" and inserted "or hatching egg" in the first sentence, inserted "by the Department of Agriculture" and "by the Board of Agriculture" in the second sentence and substituted "the superior court of the county wherein the hatchery is or is sought to be located" for "any court of competent jurisdiction" at the end of the third sentence.

§ **106-543. Requirements of national poultry and turkey improvement plans must be met.**—All baby chicks, turkey poults and hatching eggs produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry and turkey improvement plans as administered by the North Carolina Department of Agriculture and the regulations issued by authority of this article for the control of pullorum disease and other infectious diseases provided that nothing in this article shall require any hatchery to adopt the national poultry improvement plan or national turkey improvement plan. (1945, c. 616, s. 5; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "produced" near the beginning of the section, substituted "national poultry and turkey improvement plans" and "national poultry improvement plan or national turkey improvement plan" for "national poultry improvement plan" near the middle and at the end of the section and inserted "and other infectious diseases."

§ **106-544. Shipments from out of State.**—All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum and typhoid disease control provided for in this article and the regulations issued by authority of this article, and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin certifying same. (1945, c. 616, s. 6; 1969, c. 464.)

Editor's Note.—The 1969 amendment inserted "and typhoid" near the middle of the section.

§ **106-545. False advertising.**—No hatchery, hatchery dealer, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleted "public" following "No" at the beginning of the section and inserted "hatchery dealer."

§ **106-546. Notice describing grade of chicks to be posted.**—All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture describing the grade of chicks approved by the North Carolina Department of Agriculture. (1945, c. 616, s. 8; 1969, c. 464.)

Editor's Note.—The 1969 amendment substituted "or" for "and" near the beginning of the section and inserted "North Carolina" in two places preceding "Department of Agriculture."

§ **106-547. Records to be kept.**—Every hatchery, hatching egg dealer, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9; 1969, c. 464.)

Editor's Note. — The 1969 amendment deleted "public" preceding "hatchery" and inserted "hatching egg dealer."

§ **106-548. Fees; quarantine; compulsory testing.**—For the purpose of carrying out the provisions of this article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every hatchery a fee not to exceed ten dollars ($10.00) where the egg capacity is not more than fifty thousand eggs and twenty dollars ($20.00) where the egg capacity is fifty thousand to one hundred thousand eggs, and thirty dollars ($30.00) where the egg capacity is over one hundred thousand, provided the fee for hatcheries with egg capacity not exceeding 1,000 eggs may be waived at the discretion of the Commissioner of Agriculture. Chick dealers and jobbers shall pay a fee of three dollars ($3.00) annually, said fees to be used for the enforcement of this article. The North Carolina Board of Agriculture is authorized to establish fee schedules not in excess of the actual cost thereof for pullorum and other disease testing, and the performance of services such as culling and selecting by Department personnel. When the State Veterinarian receives information or has reason to believe that pullorum disease or fowl typhoid exists in any poultry or that they have been exposed to one of these diseases, he shall promptly cause said poultry to be quarantined on the premises where located. Said poultry or hatching eggs shall not be removed from the premises where quarantined until quarantine has been released by the State Veterinarian or his authorized representative. A permit to move such infected or exposed poultry to immediate slaughter, or to another premise under quarantine, may be issued by the State Veterinarian or his authorized representative. The Board of Agriculture is empowered to make regulations under which compulsory testing of poultry for pullorum disease or fowl typhoid may be required. (1945, c. 616, s. 10; 1969, c. 464.)

Editor's Note.—The 1969 amendment rewrote this section.

§ 106-549. Violation a misdemeanor.—Any person, firm or corporation who shall wilfully violate any provision of this article or any rule or regulation duly established by authority of this article, shall be guilty of a misdemeanor and shall be fined not in excess of five hundred dollars ($500.00) or imprisoned not in excess of six months, or both fined and imprisoned, in the discretion of the court. (1945, c. 616, s. 11; 1969, c. 464.)

Editor's Note. — The 1969 amendment added the provisions as to fine and imprisonment.

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. Definitions.—As used in this article, except as otherwise specified, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissoner make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this article;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(9) "Firm" means any partnership, association, or other unincorporated business organization.

(10) "Intrastate commerce" means commerce within this State.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.

(13) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(14) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning

comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this subparagraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this or the subsequent article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under § 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under § 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient: except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subparagraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent article.

(17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent article.

(19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent article.

(20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.

(21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.

(22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection under this article. (1969, c. 893, s. 1.)

Revision of Article. — Session Laws 1969, c. 893, effective Jan. 1, 1970, repealed former articles 49B, containing sections numbered 106-549.15 through 106-549.28, and 49C, containing sections numbered 106-549.29 through 106-549.48, and enacted present articles 49B and 49C in their place. Former article 49B related to voluntary inspection of meat, meat products and meat by-products, and was codified from Session Laws 1957, c. 1379.

Session Laws 1969, c. 893, s. 25, provides: "This act shall be designated as the 'North Carolina Compulsory Meat Inspection Act'."

Session Laws 1969, c. 893, s. 26, provides, in part: "The provisions of article 12 of chapter 106 which are inconsistent with the provisions of this act shall not apply to any meat or meat food product regulated herein."

§ **106-549.16. Statement of purpose.**—Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and results in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by North Carolina and the United States as contemplated by this and the subsequent Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this and the subsequent Article. (1969, c. 893, s. 2; 1971, c. 54, s. 3.)

Editor's Note. — The 1971 amendment substituted "properly" for "property" in the third sentence.

§ 106-549.17. Inspection before slaughter.—For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for. (1969, c. 893, s. 3.)

§ 106-549.18. Inspection; stamping carcass.—For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tax as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof. (1969, c. 893, s. 4.)

Editor's Note.—The word "do," which is enclosed in brackets in the section as set out above, appears in the 1969 act, but would seem to be superfluous.

§ 106-549.19. Application of article; place of inspection. — The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent article. (1969, c. 893, s. 5.)

§ 106-549.20. Inspectors access to businesses.—For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "North Carolina Department of Agriculture Inspected and Passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "North Carolina Department of Agriculture Inspected and Condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6.)

§ 106-549.21. Stamping container or covering; regulation of container.—(a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "North Carolina Department of Agriculture Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "North Carolina Department of Agriculture Inspected and Passed" under the provisions of this article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or authorized representative may require, the information required under subdivision (15) of § 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent article;

(2) Definitions and standards of identity or composition for articles subject to this article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection

Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or his authorized representative, are permitted.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the Superior Court of Wake County. Such appeal shall be under the provision of article 33 of chapter 143 of the General Statutes. (1969, c. 893, s. 7.)

§ **106-549.22. Rules and regulations of Board.**—The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture Inspected and Passed." (1969, c. 893, s. 8.)

§ **106-549.23. Prohibited slaughter, sale, and transportation.** — No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for intrastate commerce, except in compliance with the requirements of this and the subsequent article.

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

  a. Any such articles which (i) are capable of use as human food, and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or,

  b. Any articles required to be inspected under this article unless they have been so inspected and passed, or

  c. Do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (1969, c. 893, s. 9.)

§ **106-549.24. Prohibited acts regarding certificate.**—(a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner or his authorized representative.

(b) No person, firm, or corporation shall

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner or his authorized representative use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner or his authorized representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board;

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1969, c. 893, s. 10.)

§ **106-549.25. Slaughter, sale and transportation of equine carcasses.**—No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11.)

§ **106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.**—The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent article, and all inspections and examinations made under this article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000.00) and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000.00) and by imprisonment for not less than one year nor more than three years. (1969, c. 893, s. 12.)

§ **106-549.27. Exemptions from Article.**—(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this paragraph may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2.)

Editor's Note. — The 1971 amendment deleted the former second, third and fourth sentences of subsection (b), exempting any person selling to a consumer not more than $2,000.00 in retail value of any meat food product produced and raised on his own land in any one year, defining "person" and requiring the keeping of records of such sales. The amendment also inserted "bearing the official mark of inspection" in the present second sentence of subsection (b).

§ **106-549.28. Regulation of storage of meat.**—The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment. (1969, c. 893, s. 14.)

ARTICLE 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ **106-549.29. North Carolina Department of Agriculture responsible for cooperation.**—(a) The North Carolina Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous article in such a manner as will effectuate the purposes of this and the previous article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The North Carolina Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this and the previous article to pay fifty per centum (50%) of the estimated total cost of the cooperative program.

(c) The North Carolina Department of Agriculture is further authorized to recommend to the said Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of section 301 of said act. (1969, c. 893, s. 15.)

Revision of Article. — Session Laws 1969, c. 893, effective Jan. 1, 1970, repealed former articles 49B, containing sections numbered 106-549.15 through 106-549.28, and 49C, containing sections numbered 106-549.29 through 106-549.48, and enacted present articles 49B and 49C in their place. Former article 49C related to compulsory meat inspection and was codified from Session Laws 1961, c. 719.

Session Laws 1969, c. 893, s. 25, provides: "This act shall be designated as the 'North Carolina Compulsory Meat Inspection Act'."

Session Laws 1969, c. 893, s. 26, provides, in part: "The provisions of article 12 of chapter 106 which are inconsistent with the provisions of this act shall not apply to any meat or meat food product regulated herein."

§ **106-549.29:1:** Repealed by Session Laws 1969, c. 893, s. 26, effective January 1, 1970.

§ **106-549.30. Refusal of Commissioner to inspect and certify meat.** —The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this and the previous Article) refuse to provide, or withdraw, inspection service under Article 49B with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Article 49B because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (i) any felony, or (ii) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this or the previous Article for withdrawal of inspection services under Article 49B from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the Commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the appropriate court as provided in § 106-549.33. (1969, c. 893, s. 16.)

§ **106-549.31. Enforcement against uninspected meat.** — Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed twenty days, pending action under § 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17.)

§ **106-549.32. Enforcement against condemned meat; appeal.**—(a) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this State after such transportation, and that (i) is or has been prepared, sold, transported or otherwise distributed or offered or received for distribution in violation of this or the previous article, or (ii) is capable of use as human food and is adulterated or misbranded, or (iii) in any other way is in violation of this or the previous article, shall be liable to be proceeded against and seized and condemned, at any time, on a complaint in any proper court as provided in § 106-549.33 within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the order be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or animals shall not be sold contrary to the provisions of this or the previous article. Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this or the previous article, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by the authorized representative of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such cases shall be heard by the superior court without a jury, with the right of the aggrieved party to appeal to the Court of Appeals, and all such proceedings shall be at the suit of and in the name of this State. No appeal shall lie from the Court of Appeals.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this or the previous article, or other laws. (1969, c. 893, s. 18.)

§ **106-549.33. Jurisdiction of superior court.** — The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this and the previous article, and shall have jurisdiction in all other kinds of cases arising under this and the previous article, provided however, all prosecutions for criminal violations under this and the previous article shall be in any court having jurisdiction over said violation. (1969, c. 893, s. 19.)

§ **106-549.34. Interference with inspector.**—Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this or the previous article shall be guilty of a misdemeanor and fined not more than five hundred dollars ($500.00) or imprisoned for not more than six months or both fined and imprisoned. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector or the Meat and Poultry Inspection Service. Whoever, in the commission of any such acts, uses a deadly weapon, shall be fined not less than two hundred fifty dollars ($250.00) or not more than one thousand dollars ($1,000.00) or imprisoned not less than one year or not more than two years, or both. (1969, c. 893, s. 20.)

§ 106-549.35. Punishment for violation. — (a) Any person, firm, or corporation who violates any provision of this or the previous article or any regulation of the Board for which no other criminal penalty is provided by this or the previous article shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars ($500.00), or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in § 106-549.15 (1) h, such person, firm or corporation shall be subject to imprisonment for not more than three years or a fine of not more than ten thousand dollars ($10,000.00) or both: Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this article shall be construed as requiring the Commissioner or his authorized representative to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this article whenever he believes that the public interest will be adequately served by a suitable written notice of warning. (1969, c. 893, s. 21.)

§ 106-549.36. Gathering information; reports required; use of subpoena.—(a) The Commissioner shall also have power—

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, or corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b) For the purposes of this and the previous article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The

Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(1) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in § 106-549.33 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) Any of the courts designated in § 106-549.33 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation, to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this or the previous article or any order of the Commissioner made in pursuance thereof.

(4) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(5) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(6) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceedings, criminal or otherwise, based upon or growing out of any alleged violation of this or the previous article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than six months or by both such fine and imprisonment.

(1) Any person, firm, or corporation that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, firm, or corporation subject to this article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not more than five hundred dollars ($500.00) or to imprisonment for a term of not more than six months or to both such fine and imprisonment.

(2) If any person, firm, or corporation required by this article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for thirty days after notice of such default, such person, firm, or corporation shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person, firm, or corporation has his or its principal office or in Wake County. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(3) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00) or by imprisonment, not exceeding six months or by both such fine and imprisonment, in the discretion of the court. (1969, c. 893, s. 22.)

§ 106-549.37. Jurisdiction coterminous with federal law.—The requirements of this article shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act only to the extent provided for in section 408 of said federal act. (1969, c. 893, s. 23.)

§ 106-549.38. Rules and regulations of State Department of Agriculture.—All rules and regulations of the North Carolina Department of Agriculture not inconsistent with the provisions of this article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27.)

§ 106-549.39. Hours of inspection; overtime work; fees.—The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of forty hours in any one calendar week or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this and the previous article. (1969, c. 893, s. 27 (a).)

§§ **106-549.40 to 106-549.48:** Repealed by Session Laws 1969, c. 893, s. 26, effective January 1, 1970.

Revision of Article.—See same catchline in note to § 106-549.29.

ARTICLE 49D.

Poultry Products Inspection Act.

§ **106-549.49. Short title.**—This Article shall be designated as the North Carolina Poultry Products Inspection Act. (1971, c. 677, s. 1.)

Editor's Note.—Session Laws 1971, c. 677, s. 26, makes the act effective 30 days after ratification. The act was ratified June 25, 1971.

Former §§ 106-549.49 to 106-549.69, codified from Session Laws 1961, c. 875, and amended by Session Laws 1963, c. 1029, Session Laws 1967, c. 1137 and Session Laws 1969, c. 44, were repealed by Session Laws 1971, c. 1152. The repealing act is made effective 30 days after ratification of Session Laws 1971, c. 677, ratified June 25, 1971.

Session Laws 1971, c. 677, s. 24, contains a severability clause.

§ **106-549.50. Purpose and policy.**—(a) Poultry and poultry products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that slaughtered poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the Board and cooperation by this State and the United States as contemplated by this Article are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Article.

(b) It is hereby declared to be the policy of the General Assembly to provide for the inspection of poultry and poultry products and otherwise regulate the processing and distribution of such articles as hereinafter prescribed to prevent the movement or sale in intrastate commerce of poultry and poultry products which are adulterated or misbranded. It is the intent of the General Assembly that when poultry and poultry products are condemned because of disease, the reason for condemnation in such instances shall be supported by scientific fact, information, or criteria, and such condemnation under this Article shall be achieved through uniform inspection standards and uniform application thereof. (1971, c. 677, ss. 2, 3.)

§ **106-549.51. Definitions.**—For purposes of this Article, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraphs 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

(3) "Board" means the North Carolina Board of Agriculture.

(4) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(5) "Color additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(8) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(9) "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).

(10) "Food additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(11) "Immediate container" includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed.

(12) "Inspection service" means the official government service within this State Department of Agriculture designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.

(13) "Inspector" means an employee or official of the State Department of Agriculture authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department of Agriculture and such governmental subdivision.

(14) "Intrastate commerce" means commerce within this State.

(15) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.

(16) "Labeling" means all labels and other written, printed, or graphic matter.
   a. Upon any article or any of its containers or wrappers, or
   b. Accompanying such article.

(17) "Misbranded" shall apply to any poultry product under one or more of the following circumstances:
   a. If its labeling is false or misleading in any particular;
   b. If it is offered for sale under the name of another food;
   c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
   d. If its container is so made, formed, or filled as to be misleading;
   e. Unless it bears a label showing
      1. The name and place of business of the manufacturer, packer, or distributor; and
      2. An accurate statement of the quantity of the product in terms of weight, measure, or numerical count;

   Provided, that under paragraph 2 of this subsubdivision e, reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established, by regulations prescribed by the Board;
   f. If any word, statement, or other information required by or under authority of this Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read

and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.55 unless
  1. It conforms to such definition and standard, and
  2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.55, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of subsubdivision g, unless its label bears
  1. The common or usual name of the food, if any there be, and
  2. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause 2 of this subsubdivision i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board, after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subsubdivision k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses (if the Commissioner so requires) directly thereon, as the Board may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(18) "Official certificate" means any certificate prescribed by regulation of the Board for issuance by an inspector or other person performing official functions under this Article.

(19) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(20) "Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Article.

(21) "Official inspection legend" means any symbol prescribed by regulation of the Board showing that an article was inspected for wholesomeness in accordance with this Article.

(22) "Official mark" means the official inspection legend or any other symbol prescribed by regulation of the Board to identify the status of any article or poultry under this Article.

(23) "Person" means any individual, partnership, corporation, association, or other business entity.

(24) "Pesticide chemical" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(25) "Poultry" means any domesticated bird, whether live or dead.

(26) "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Board from definition as a poultry product under such conditions as the Board may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(27) "Poultry products broker" means any person, engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

(28) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(29) "Raw agricultural commodity" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(30) "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, or poultry, except rendering conducted under inspection or exemption under this Article.

(31) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. (1971, c. 677, s. 4.)

§ **106-549.51A. Article applicable to domesticated rabbits.**—The provisions of this Article shall apply to domesticated rabbits. (1971, c. 677, s. 25.)

§ **106-549.52. State and federal cooperation.**—(a) The Department of Agriculture is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department of Agriculture is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The Department of Agriculture is further authorized to spend public funds of this State appropriated for administration of this Article to pay fifty percent (50%) of the estimated total cost of the cooperative program as may be agreed upon by the Department of Agriculture and the U.S. Secretary of Agriculture.

(c) The Department of Agriculture is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act. (1971, c. 677, s. 5.)

§ 106-549.53. Inspection; condemnation of adulterated poultry.—(a) For the purpose of preventing the entry into or flow or movement in intrastate commerce of any poultry product which is capable of use as human food and is adulterated, the Commissioner shall, where and to the extent considered by him necessary, cause to be made by inspectors antemortem inspection of poultry in each official establishment engaged in processing poultry or poultry products solely for intrastate commerce.

(b) The Commissioner, whenever processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as human food in each official establishment engaged in processing such poultry or poultry products solely for intrastate commerce.

(c) All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall, if no appeal be taken from such determination of condemnation, be destroyed for human food purposes under the supervision of an inspector: Provided, that carcasses, parts, and products, which may by reprocessing be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the Commissioner determines that the appeal is frivolous. If the determination of condemnation is sustained the carcasses, parts, and products shall be destroyed for food purposes under the supervision of an inspector. (1971, c. 677, s. 6.)

§ 106-549.54. Sanitation of premises; regulations.—(a) Each official establishment slaughtering poultry or processing poultry products solely for intrastate commerce shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Board for the purpose of preventing the entry into or flow or movement in intrastate commerce of poultry products which are adulterated.

(b) The Commissioner shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. (1971, c. 677, s. 7.)

§ 106-549.55. Labeling standards; false and misleading labels.—(a) All poultry products inspected at any official establishment under the authority of this Article and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers as the Commissioner may require, the information required under subdivision (1) of G.S. 106-549.51. In addition, the Commissioner whenever he determines such action is practicable and necessary for the protection of the public, may require nonconsumer packaged carcasses at the time they leave the establishment to bear directly thereon in distinctly legible form any information required under such subdivision (1).

(b) The Board, whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marking or otherwise labeling any articles or poultry subject to this Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug and Cosmetic Act, or under the Federal Poultry Products Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(c) No article subject to this Article shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Commissioner, are permitted.

(d) If the Commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this Article is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner, such person may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. Any such determination by the Commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person adversely affected thereby appeals to the Superior Court of Wake County under the provisions of Article 33 of Chapter 143 of the General Statutes. (1971, c. 677, s. 8.)

§ 106-549.56. Prohibited acts.—(a) No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles solely for intrastate commerce, except in compliance with the requirements of this Article;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce,

  a. Any poultry products which are capable of use as human food and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or

  b. Any poultry products required to be inspected under this Article unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to

cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board, except as may be authorized by regulations of the Board;

(5) Use to his own advantage, or reveal other than to the authorized representatives of the State government or any other government in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this Article concerning any matter which is entitled to protection as a trade secret.

(b) No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(c) No person shall:

(1) Forge any official device, mark or certificate;

(2) Without authorization from the Commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Knowingly possess, without promptly notifying the Commissioner, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board; or

(6) Knowingly represent that any article has been inspected and passed, or exempted, under this Article when, in fact, it has, respectively, not been so inspected and passed, or exempted. (1971, c. 677, s. 9.)

§ **106-549.57. No poultry in violation of Article processed.**—No establishment processing poultry or poultry products solely for intrastate commerce shall process any poultry or poultry product capable of use as human food except in compliance with the requirements of this Article. (1971, c. 677, s. 10.)

§ **106-549.58. Poultry not for human consumption; records; registration.**—(a) Inspection shall not be provided under this Article at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(b) The following classes of persons shall, for such period of time as the Board may by regulations prescribe, not to exceed two years unless otherwise directed by the Commissioner for good cause shown, keep such records as are properly necessary for the effective enforcement of this Article in order to insure against adulterated or misbranded poultry products for the American consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Department of Agriculture, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person that engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person that engages in the business of buying or selling (as poultry products brokers; wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person that engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter.

(c) No person shall engage in business, in or for intrastate commerce, as a poultry products broker, renderer, or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the Board, he has registered with the Commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

(d) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Board may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. (1971, c. 677, s. 11.)

§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.—(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than three years or both. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than 10 years, or both. (1971, c. 677, s. 12.)

§ **106-549.60. Notice of violation.**—Before any violation of this Article is reported by the Commissioner to any North Carolina solicitor for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this Article shall be construed as requiring the Commissioner or his authorized representative to report for criminal prosecution of this Article whenever he believes that the public interest will be adequately served and compliance with the Article obtained by a suitable written notice or warning. (1971, c. 677, s. 13.)

§ **106-549.61. Regulations authorized.**—(a) The Commissioner may by regulations prescribe conditions under which poultry products capable of use as human food, shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

(b) The Board shall promulgate such other rules and regulations as are necessary to carry out the provisions of this Article.

(c) When opportunity is afforded for submission of comments by interested persons on proposed rules or regulations under this Article, it shall include opportunity for oral presentation of views. (1971, c. 677, s. 14.)

§ **106-549.62. Intrastate operations exemptions.** — (a) The Board shall, by regulation and under such conditions, including requirements, as to sanitary standards, practices, and procedures as it may prescribe, exempt from specific provisions of this Article with respect to processing of poultry or poultry products solely for intrastate commerce and distribution of poultry or poultry products only in such commerce:

(1) Retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail dealers is the cutting up of poultry products on the premises where such sales to consumers are made;

(2) For such period of time as the Commissioner determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this Article, any person engaged in the processing of poultry or poultry products and the poultry or poultry products processed by such person: Provided, however, that no such exemption shall continue in effect more than 120 days after enactment of this Article;

(3) Persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by

recognized religious dietary laws, to the extent that the Commissioner determines necessary to avoid conflict with such requirements while still effectuating the purposes of this Article;

(4) The slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees;

(5) The custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: Provided, that such custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food;

(6) The slaughtering and processing of poultry products by any poultry producer on his own premises with respect to sound and healthy poultry raised on his premises and the distribution by any person of the poultry products derived from such operations, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of such poultry producer, and if they are not otherwise misbranded, and are sound, clean, and fit for human food when so distributed; and

(7) The slaughtering of sound and healthy poultry or the processing of poultry products of such poultry by any poultry producer or other person for distribution by him directly to household consumers, restaurants, hotels, and boarding houses, for use in their own dining rooms, or in the preparation of meals for sales direct to consumers, if, in lieu of other labeling requirements, such poultry products are identified with the name and address of the processor, and if they are not otherwise misbranded and are sound, clean, and fit for human food when distributed by such processor.

(b) In addition to the specific exemptions authorized in subsection (a), the Board shall, when it determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with subsection (c) for the exemption of the operation and products of small enterprises (including poultry producers), not exempted under subsection (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, solely for distribution within this State, from such provisions of this Article as it deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as it shall prescribe to effectuate the purposes of this Article.

(c) The exemptions provided for in subdivisions (a)(6) and (7) above shall not apply if the poultry producer or other person engages in the current calendar year in the business of buying or selling any poultry or poultry products other than as specified in such subdivisions. No exemption under subdivisions (a)(6) or (7) or subsection (b) shall apply to any poultry producer or other person who slaughters or processes the products of more than 5,000 turkeys or an equivalent number of poultry of all species in the current calendar year (four birds of other species being deemed the equivalent of one turkey).

(d) The provisions of this Article requiring inspection shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments, if no poultry or poultry products are processed at the establishment for distribution outside this State or otherwise subject to inspection under the Federal Poultry Products Inspection Act.

(e) The provisions of this Article shall not apply to poultry producers with respect to poultry of their own raising on their own farms if (i) such producers slaughter not more than 250 turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey); (ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; and (iii) such poultry moves only in intrastate commerce.

(f) The adulteration and misbranding provisions of this Article, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (a), (b), or (e).

(g) The Commissioner may by order suspend or terminate any exemption under subsections (a) or (b) of this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this Article. (1971, c. 677, s. 15.)

Editor's Note.—This Article was ratified June 25, 1971, and made effective 30 days after ratification.

§ **106-549.63. Commissioner may limit entry of products to establishments.**—The Commissioner may limit the entry of poultry products and other materials into any official establishment, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Article. (1971, c. 677, s. 16.)

§ **106-549.64. Refusal of inspection services; hearing; appeal.**—(a) The Commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Article) refuse to provide, or withdraw, inspection service under this Article with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection upon this Article because the applicant or recipient or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or State court, within the previous 10 years of

(1) Any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions in food; or

(2) Any felony, involving fraud, bribery, extortion, or any other act or circumstances indicating a lack of the integrity needed for the conduct of operations affecting the public health. For the purpose of this subsection a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of ten per centum (10%) or more of its voting stock or employee in a managerial or executive capacity

(b) Upon the withdrawal of inspection service from any official establishment for failure to destroy condemned poultry products as required under G.S. 106-549.53, or other failure of an official establishment to comply with the requirements as to premises, facilities, or equipment, or the operation thereof, as provided in G.S. 106-549.54, or the refusal of inspection service to any applicant therefor because of failure to comply with any requirements under G.S. 106-549.54, the applicant for, or recipient of, the service shall, upon request, be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Commissioner.

(c) The determination and order of the Commissioner when made after opportunity for hearing, with respect to withdrawal or refusal of inspection service under this Article shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the Superior Court of Wake County. Judicial review of any such order shall be under the provisions of Article 33 of Chapter 143 of the General Statutes. (1971, c. 677, s. 17.)

§ **106-549.65. Product detained if in violation.**—Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any inspector of the Meat and Poultry Inspection Service of the Department of Agriculture upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Article or of any other State or federal law or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under G.S. 106-549.66 or notification of any federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the area supervisor of the Department of Agriculture Poultry Inspection Service that the article or poultry is eligible to retain such marks. (1971, c. 677, s. 18.)

§ **106-549.66. Seizure or condemnation proceedings.**—(a) Any poultry product, or any dead, dying, or disabled, or diseased poultry, that is being transported in intrastate commerce, subject to this Article, or is held for sale in this State after such transportation, and that

(1) Is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Article, or

(2) Is capable of use as human food and is adulterated or misbranded, or

(3) In any other way is in violation of this Article, shall be liable to be proceeded against and seized and condemned, at any time, on an affidavit filed in any superior court within the jurisdiction of which the article or poultry is found. If the article or poultry is condemned it shall, after entry of the judgment, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the general fund of this State, but the article or poultry shall not be sold contrary to the provisions of this Article, or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic Act: Provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or poultry shall not be sold or otherwise disposed of contrary to the provisions of this Article or the laws of the United States, the court may direct that such article or poultry be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to insure compliance with the applicable laws. When an order of condemnation is entered against the article or poultry and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or poultry. The proceedings in such cases shall conform, as nearly as may be, to civil actions and either party may de-

mand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the State.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Article, or other laws. (1971, c. 677, s. 19.)

§ 106-549.67. Superior court jurisdiction; proceedings in name of State.—The superior court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Article, and shall have jurisdiction in all other kinds of cases arising under this Article. All proceedings for the enforcement or to restrain violations of this Article shall be by and in the name of this State. (1971, c. 677, s. 20.)

§ 106-549.68. Powers of Commissioner; subpoenas; mandamus; self-incrimination; penalties.—(a) The Commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons;

(2) To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them to file with the Commissioner, in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

(b)(1) For the purposes of this Article the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena the Commissioner may invoke the aid of any court designated in G.S. 106-549.67 in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) Any of the courts designated in G.S. 106-549.67 within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the Attorney General of this State at the request of the Commissioner, the superior court shall have jurisdiction to issue writs or [of] mandamus commanding any person to comply with the provisions of this Article or any order of the Commissioner made in pursuance thereof.

(5) The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Article at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commissioner as hereinbefore provided.

(6) Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this State, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or in obedience to the subpoena of the Commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Article, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c)(1) Any person that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the Commissioner shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Article, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this Article or that shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of any person subject to this Article or that shall willfully remove out of the jurisdiction of this State, or willfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, or that shall willfully refuse to submit to the Commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this Article in his or its possession or within his or its control, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than five hundred dollars ($500.00) nor more than five thousand

($5,000), or to imprisonment for a term of not more than two years, or to both such fine and imprisonment.

(3) If any person required by this Article to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person shall forfeit to this State the sum of one hundred dollars ($100.00) for each and every day of the continuance of such failure, which forfeiture shall be payable into the general fund of this State, and shall be recoverable in a civil suit in the name of the State brought in the superior court where the person has his or its principal office or in any county in which he or it shall do business. It shall be the duty of the Attorney General of this State, to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the amount recovered in such action.

(4) Any officer or employee of this State who shall make public any information obtained by the Commissioner without his authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (1971, c. 677, s. 21.)

§ **106-549.68A. Article applicable to those regulated by federal act.**—The requirements of this Article shall apply to persons, establishments, poultry, poultry products and other articles regulated under the Federal Poultry Products Inspection Act only to the extent provided for in section 23 of said federal act. (1971, c. 677, s. 22.)

§ **106-549.69. Inspection costs.**—The cost of inspection rendered under the requirements of this Article, shall be borne by this State, except as provided in G.S. 106-549.52 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Article, at such rates as the Commissioner may determine shall be borne by such establishments. Sums received by the Department of Agriculture in reimbursement for sums paid out for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section. (1971, c. 677, s. 23.)

ARTICLE 49F.

Biological Residues in Animals.

§ **106-549.81. Definitions.**—For the purpose of this Article, the following terms shall have the meanings ascribed to them in this section:

(1) "Animal" means any member of the animal kingdom except man.

(2) "Animal feed" means any meat, grain, forage, or other food of any plant, animal or mineral origin, or any combination thereof, which is normally fed to any animal.

(3) "Animal produce" means any product derived from any animal, whether suitable or not for human consumption.

(4) "Biological residue" means any substance, including metabolites, remaining in or on any animal prior to or at the time of slaughter or in any of its tissues after slaughter, or in or on any animal product or animal feed, as the result of treatment with, or exposure, of the animal, animal product, or animal feed to any pesticide, hormone, hormone-like substance, growth promoter, antibiotic, anthelmintic, tranquilizer, or other therapeutic or prophylactic agent.

(5) "Board" means the North Carolina Board of Agriculture.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized delegate.

(7) "Person" means any individual, partnership, corporation, association, cooperative or other legal entity.

(8) "State" means the State of North Carolina. (1971, c. 1183, s. 1.)

Editor's Note. — Session Laws 1971, c. 1183, s. 10, makes this Article effective on Sept. 1, 1971.

Session Laws 1971, c. 1183, s. 9, effective Sept. 1, 1971 contains a severability clause.

§ **106-549.82. Detention or quarantine; lifting quarantine; burden of proof.**—Any animal, animal product, or animal feed which the Commissioner has reasonable cause to believe contains or bears any biological residue may be immediately detained or quarantined by written order of the Commissioner until it can be determined in a manner acceptable to the Commissioner that the animal, animal feed, or animal product does not contain or bear a biological residue, or that the biological residue therein is within tolerances which are established by, or approved by, the Board, and the detention or quarantine is removed; or the animal, animal product or animal feed is destroyed or otherwise disposed of in a manner acceptable to the Commissioner; or in the case of a live animal, it has been treated in a manner acceptable to the Commissioner to reduce the level of any biological residue to a level acceptable to the Commissioner. The burden of proof under this section shall be on the owner or custodian of such animal, animal feed or animal product. (1971, c. 1183, s. 2.)

§ **106-549.83. Appellate review; order pending appeal; bond.**—Any order or quarantine or detention made by the Commissioner may be appealed by the aggrieved party to the superior court of the county wherein such animal, animal product or animal feed is quarantined or detained. The superior court judge, on at least 24 hours notice, may hear said appeal in or out of term, in court or in chambers and may affirm, reverse or modify the order of quarantine or detention imposing such conditions as he may deem just and proper. Any party may appeal from the superior court to the Court of Appeals. Pending an appeal from the Commissioner or the superior court, any regular or special superior court judge residing in or holding court in the district may enter such orders as he deems necessary for the preservation or disposition of the animal, animal product or feed, and may require the posting of a bond for the faithful performance of such order. (1971, c. 1183, s. 3.)

§ **106-549.84. Movement of contaminated animals forbidden.**—(a) No person shall ship, transport, or otherwise move, or deliver, or receive for movement, any animal, animal product, or animal feed under detention or quarantine pursuant to G.S. 106-549.82, except under written permit of the Commissioner and in accordance with the conditions stated in such written permission, or until the detention or quarantine order has been revoked by written order of the Commissioner.

(b) No person shall ship, transport, or otherwise move, or deliver or receive for movement any animal, animal product, or animal feed which he knows, or by the exercise of reasonable care would know, contains or bears a biological residue which exceeds the tolerances established or approved by the Board. (1971, c. 1183, s. 4.)

§ **106-549.85. Inspection of animals, records, etc.** — The Commissioner may enter any place within the State at all reasonable times where any animal, animal product or animal feed is kept to examine the facilities, inventory and/or copy the records thereof, and to take reasonable samples of any such animal, animal product or animal feed after giving notice in writing to the owner or custodian of the premises to be entered. If such person shall refuse to consent to such entry, the Commissioner may apply to any district court judge and such judge may order, without notice, that the owner or custodian of any place where any animal, animal product or animal feed is kept to permit the Commissioner to enter such place for the purposes herein stated and failure by any person to obey such order may be punished as for contempt. (1971, c. 1183, s. 5.)

§ **106-549.86. Investigation to discover violation.**—The Commissioner shall make such investigations or inspections as he deems necessary to determine whether any person has violated, or is violating, any provision of this Article or any regulation promulgated thereunder, and when any biological residue is found in or on any animal, animal product, or animal feed, the Commissioner may make such investigation or inspection as he deems necessary to determine the source of the substance which resulted in the biological residue. (1971, c. 1183, s. 6.)

§ **106-549.87. Promulgation of regulation.**—The North Carolina Board of Agriculture is hereby authorized to promulgate regulations as it may deem necessary to effectuate the purposes of this Article, including but not limited to, tolerances for biological residues. It shall be unlawful for any person to violate any provision of this Article or any regulation promulgated by the Board under authority of this Article. (1971, c. 1183, s. 7.)

§ **106-549.88. Penalties.**—Any person who violates any provisions of this Article or any regulations thereunder shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars ($500.00) or imprisonment not to exceed six months, or both fine and imprisonment. (1971, c. 1183, s. 8.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ **106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least thirty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on volume not to exceed six cents (6¢) per hundredweight of milk sold. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268.)

Editor's Note. — The first 1967 amendment substituted "thirty days" for "sixty days" in the first sentence.

The second 1967 amendment added the last sentence.

§ **106-557.1. Ballot by mail.**—(a) As an alternative method of conducting a referendum under the provisions of this article, the certified agency in its discretion may conduct the referendum by a mail ballot as herein provided. In the event that a certified agency determines in its discretion to conduct a mail ballot, public notice of said mail ballot shall be made at least 30 days before the date of said referendum. Said notice shall contain the same information required by G.S. 106-557, except that the notice will also state that the ballot is to be conducted by mail rather than at polling places. The notice shall also state that official ballots are being mailed on a date specified in the notice to all persons known by the certified agency to be eligible to vote and that any person not receiving by mail an official ballot by a date specified in the notice will have ten days thereafter to apply for an official ballot at the office of the certified agency. The notice shall state the deadline for the receipt of all ballots and the address of the certified agency.

Official ballots shall be prepared by the certified agency and mailed by first class mail to the last known address of all persons known by the certified agency to be eligible to vote. As announced in the public notice, said ballots shall be made available for a period of not less than ten days, to those who are eligible to vote in said referendum and did not receive a ballot by mail.

Before any person shall receive an official ballot, he shall furnish such proof as the certified agency may require of his eligibility to vote in said referendum. The certified agency shall keep a list of those persons who receive official ballots. No person may receive more than one official ballot unless he satisfies the certified agency that his ballot has been lost or destroyed.

No votes shall be counted which are not on official ballots. To be eligible to be counted, ballots must be received by the certified agency at the place and by the deadline previously announced in the public notice of said referendum.

(b) The provisions of this section shall not apply to the North Carolina Potato Association and the North Carolina Soybean Association. (1969, c. 111.)

§ 106-559. Basis of referendum; eligibility for participation; question submitted; special provisions for North Carolina Cotton Promotion Association.—Any referendum conducted under the provisions of this article may be held either on an area or state-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or state-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. Provided, that notwithstanding any other provision of this chapter, the North Carolina Cotton Promotion Association, Inc., in 1967 shall hold a referendum, pursuant to law, for the years 1969 and 1970, or for the years 1969 through 1973, in its discretion Thereafter, the North Carolina Cotton Promotion Association, Inc. shall conduct either triennial or sexennial referendums as provided by law. (1947, c. 1018, s. 10; 1967, cc 213, 561.)

Editor's Note.—The first 1967 amendment added the last two sentences.

The second 1967 amendment added, at the end of the next-to-last sentence, "or for the years 1969 through 1973, in its discretion."

§ 106-562. Regulations as to referendum; notice to farm organizations and county agents.—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13; 1967, c. 774, s. 2.)

Editor Note.—The 1967 amendment substituted "thirty days" for "sixty days" in the first sentence.

§ 106-564.1. Alternate method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the 1st day of June of each year following such deduction, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of article 50 of chapter 106 and shall remit the same to the North Carolina Department of Agriculture. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agriculture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3.)

Editor's Note. — The 1969 amendment added the second paragraph.

§ 106-564.3. Alternative method for collection of assessments relating to cattle.—As an alternative method for the collection of assessments provided for in article 50 of chapter 106 of the General Statutes, as amended, and as the same relates to all cattle, including those cattle sold for slaughter, upon the request of the duly certified agency of the producers of all cattle, including those which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations, engaged in the buying, selling or handling of cattle in this State, and on and after the date specified in the letter, the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of all cattle bought, acquired or sold. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the administrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell any cattle, including cattle for slaughter, without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the 20th day of the following month, be remitted by such purchaser as above described, to the Commissioner of Agriculture of North Carolina, who shall thereupon pay the amount of the assessments to the duly certified agency of the producers of all such cattle entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling all cattle shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176; 1969, c. 184.)

Editor's Note.—Prior to the 1969 amendment this section applied to assessments relating to cattle sold for slaughter. The amendment provides for assessments on all cattle sold.

§ 106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessments shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within 30 days from the date on which said assessment is collected from such farmer or producer. Provided, however, that as to growers or producers of potatoes, apples or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes, apples or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within 30 days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. (1947, c. 1018, s. 18; 1959, c. 311; 1969, c. 605, ss. 1, 2.)

Editor's Note. — Session Laws 1969, c. 605, s. 1, inserted "apples" in the second sentence and in the proviso to the third sentence.

Amendment Effective July 1, 1972. — Session Laws 1969, c. 605, s. 2, effective July 1, 1972, will add a last sentence reading as follows:

Provided further that on and after July 1, 1972, as to growers or producers of apples there shall be no right of refund of assessments levied pursuant to the referendum provided for by Article 50, Chapter 106 of the General Statutes of North Carolina.

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.—In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six (6) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8; 1967, c. 631, s. 1.)

Editor's Note. — The 1967 amendment substituted "six (6) years" for "three (3) years" near the beginning of the section.

§ 106-568.10. Subsequent referenda; continuation of assessment.—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. (1951, c. 827, s. 10; 1967, c. 631, s. 2.)

Editor's Note. — The 1967 amendment substituted "six years" for "three years" at the end of the first sentence and in two places in the second sentence and substituted "sixth year" for "third year" in the second sentence.

ARTICLE 50B.

North Carolina Agricultural Hall of Fame.

§ 106-568.13. North Carolina Agricultural Hall of Fame created.

State Government Reorganization.—The North Carolina Agricultural Hall of Fame was transferred to the Department of Agriculture by § 143A-61, enacted by Session Laws 1971, c. 864.

ARTICLE 50C.

Promotion of Sale and Use of Tobacco.

§ **106-568.18. Policy as to joint action of farmers.**—It is hereby declared to be in the public interest that the farmers of North Carolina who produce flue-cured tobacco be permitted and encouraged to act jointly in promoting and stimulating, by organized methods and through the medium established for such purpose, export trade for flue-cured tobacco and the use of tobacco everywhere. (1959, c. 309, s. 1.)

§ **106-568.19. Policy as to referendum on question of annual assessment.**—For the purpose of raising reasonable and necessary funds for producer participation in the operations of the agency set up under farmer sponsorship for the promotion of export trade in flue-cured tobacco and the use of tobacco everywhere, it is proper, desirable, necessary and in the public interest that the farmers in this State engaged in the production of flue-cured tobacco shall have the opportunity and privilege of participating in a referendum to be held as hereinafter provided, in which referendum there shall be determined the question of whether or not the farmers of the State engaged in the production of flue-cured tobacco shall levy upon themselves an annual assessment for the purposes herein stated. (1959, c. 309, s. 2.)

§ **106-568.20. Referendum in 1961 on assessment for next three years.**—During the year 1961 and upon the exact date in such year as may be determined in the manner hereinafter set forth and under rules and regulations as established under the provisions of this article, there shall be held in every county in North Carolina in which flue-cured tobacco is produced a referendum to be participated in by all farmers engaged in the production of flue-cured tobacco, including owners of farms on which such tobacco is produced, tenants and sharecroppers, in which referendum said individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years (1962, 1963 and 1964), such amount as may have been theretofore or as may be thereafter determined by the board of directors of Tobacco Associates, Incorporated, but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina. (1959, c. 309, s. 3.)

§ **106-568.21. Effect of more than one-third vote against assessment in 1961 referendum.**—If in such referendum more than one third of the tobacco farmers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then no assessment shall be levied or collected pursuant to that referendum. (1959, c. 309, s. 4.)

§ **106-568.22. Effect of two-thirds vote for assessment in 1961 referendum.**—If in such referendum two thirds or more of the eligible tobacco farmers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment to be determined by the board of directors of Tobacco Associates, Incorporated, but in an amount of not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, then such assessment shall be collected in the manner hereinafter provided. (1959, c. 309, s. 5.)

§ **106-568.23. Regulations as to 1961 referendum; notice to farm organizations and county agents.**—The exact date in the said year 1961, on which such referendum shall be held and the hours, voting places, and rules and regulations under which such referendum shall be conducted, shall be established and determined by the board of directors of the North Carolina corporation known and designated as Tobacco Associates, Incorporated, established under the leadership of farm organizations in the State of North Carolina for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and the use of tobacco everywhere; the said referendum date, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published through the medium of the public press in the State of North Carolina by said board of directors at least thirty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which flue-cured tobacco is grown. (1959, c. 309, s. 6.)

§ **106-568.24. Distribution of ballots; arrangements for holding 1961 referendum; declaration of results.**—The said board of directors of Tobacco Associates, Incorporated, shall likewise prepare and distribute in advance of said referendum all necessary ballots for the purpose thereof, and shall under the rules and regulations promulgated by said board arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten days thereafter the said board of directors shall canvass and publicly declare the results of such referendum. (1959, c. 309, s. 7.)

§ **106-568.25. Question at 1961 referendum.**—Said referendum shall be upon the question of whether or not the farmers eligible for participation therein and voting therein shall favor an assessment for the period of three years, 1962, 1963 and 1964, in an amount in each of said years as determined by or to be determined by the board of directors of Tobacco Associates, Incorporated but not more than one dollar ($1.00) per acre per year on all flue-cured tobacco acreage in the State of North Carolina, for the purpose of providing farmer participation in the fund and through the agency established for the stimulation, expansion and development of export markets for flue-cured tobacco and the encouragement of the use of flue-cured tobacco everywhere. (1959, c. 309, s. 8.)

§ **106-568.26. Collection of assessments; custody and use of funds.**—In the event two thirds or more of the eligible farmers voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the years herein set forth and under such method, rules and regulations as may be determined by the board of directors of the said Tobacco Associates, Incorporated, and the said assessment so collected shall be paid into the treasurer of said Tobacco Associates, Incorporated, to be used along with funds from other sources, for the purpose of stimulating, developing and expanding export trade for flue-cured tobacco and encouraging the use of flue-cured tobacco everywhere. (1959, c. 309, s. 9.)

§ **106-568.27. Required affirmative vote of directors of Tobacco Associates, Incorporated.**—No assesment shall be made pursuant to this article unless same shall receive the affirmative vote of not less than two thirds of the members of the board of directors of Tobacco Associates, Incorporated, including the affirmative vote of not less than two thirds of such board members who were elected by North Carolina farm organizations. (1959, c. 309, s. 10.)

§ **106-568.28. Right of farmers dissatisfied with assessments; time for demanding refund.**—In the event any referendum authorized by this article is carried in the affirmative by such two-thirds vote and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the board of directors of Tobacco Associates, Incorporated, any farmer or tobacco producer upon whom and against whom any such annual assessment shall have been levied and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said Tobacco Associates, Incorporated, a refund of such annual assessment so collected from such farmer or producer of tobacco, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer or deducted from the proceeds of the sale of tobacco of such farmer or producer. (1959, c. 309, s. 11.)

§ **106-568.29. Subsequent referendum after defeat of assessment.**—In the event any referendum conducted as provided for in this article shall not be supported by two thirds or more of those voting therein, then the board of directors of Tobacco Associates, Incorporated shall have full power and authority to call another referendum for the purposes herein set forth in any succeeding year, on the question of an annual assessment for the next three years or less. If the referendum is carried as provided in this article, then the assessments may be levied and collected as provided in this article. (1959, c. 309, s. 12.)

§ **106-568.30. Referendum as to continuance of assessments approved at prior referendum.**—In the event any referendum, held at any time under the provisions of this article, is carried by the vote of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are being levied annually, then the board of directors of Tobacco Associates, Incorporated shall, in its discretion, have full power and authority to call and conduct during the last year of such period another referendum in which the farmers and producers of flue-cured tobacco shall vote upon the question of whether or not assessments under this article shall be continued for the next ensuing three years. If the referendum is carried as provided in this article, then assessments may be levied and collected as provided in this article. (1959, c. 309, s. 13.)

§ **106-568.31. Filing and publication of financial statement by treasurer of Tobacco Associates, Incorporated.**—The treasurer of Tobacco Associates, Incorporated shall, within thirty days after the end of any fiscal year, file with the State Auditor a financial statement as of the end of the fiscal year and a detailed statement of operations for the year ended. Further a condensed statement of the financial condition and operating expenses for said fiscal year shall be published in a newspaper of general circulation, if one exists, in each county from which assessments are collected. (1959, c. 309, s. 14.)

§ **106-568.32. Levy of assessment for 1959, 1960 and 1961 authorized.**—The board of directors of Tobacco Associates, Incorporated, by a vote (as provided in § 106-568.27 above) is hereby authorized to levy an assessment for the years 1959, 1960 and 1961 on all the flue-cured tobacco acreage in the State of North Carolina in an amount for each said year, as may be determined by said board, up to but not in excess of one dollar ($1.00) per acre per year in accordance with and pursuant to a referendum and vote of North Carolina flue-cured tobacco growers held in December, 1958; said assessment to be levied and collected just as though said referendum had been held after the adoption of this article, provided that all of the requirements of this article as to the determination of the amount of the assessment and the collection of the assessment are complied with and provided further that all conditions of this article as to refund upon demand shall be applicable: Provided further that such assessments for the years 1959, 1960 and 1961 shall be in lieu of the amount of ten cents (10¢) per acre, authorized under the provisions of chapter 511 of the Session Laws of 1947. (1959, c. 309, s. 15.)

§ **106-568.33. Effect of article on prior acts.**—Insofar as the provisions of this article are different from and in conflict with the provisions of chapter 511, Session Laws of 1947 and chapter 63, Session Laws of 1951, to the extent of such conflict the provisions of this article shall be applicable and shall supersede and prevail over the provisions of said former acts and all provisions of this article shall be in full effect. So long as assessments are made under this article, no assessment shall be made and collected under the provisions of chapter 511, Session Laws of 1947, as amended. (1959, c. 309, s. 16.)

Chapter 107.

Agricultural Development Districts.

§§ **107-1 to 107-25**: Repealed by Session Laws 1971, c. 780, s. 20, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Chapter 108.

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Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

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Revision of Chapter. — Session Laws 1969, c. 546, effective July 1, 1969, revised and rewrote this chapter, substituting present §§ 108-1 through 108-81 for former §§ 108-1 through 108-86. No attempt has been made to point out the changes made by the revision, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the revised chapter.

ARTICLE 1.

Administration.

Part 1. The State Board of Social Services.

§ 108-1. Creation and change of name.—The State Board of Social Services is hereby created as a policy board for the State Department of Social Services and for the county boards of social services as set out in this chapter. In any law of this State or in any rule or regulation, any mention of, or words referring to the State Board of Charities and Public Welfare or to the State Board of Public Welfare shall be deemed to mean the State Board of Social Services, and any mention of or words referring to the State Department of Public Welfare, the Commissioner of Public Welfare, a county board of public welfare, a county department of public welfare, or a county director of public welfare shall be deemed to mean, respectively, the State Department of Social Services, the Commissioner of Social Services, a county board of social services, a county department of social services, and a county director of social services. (1969, c. 546, s. 1; c. 982.)

Editor's Note. — Session Laws 1969, c. 982, effective July 1, 1969, rewrote the second sentence.

State Government Reorganization.—The Board of Social Services was transferred to the Department of Human Resources by § 143A-136, enacted by Session Laws 1971, c. 864.

§ 108-2. Appointment, term of office, and compensation.—(a) The State Board of Social Services shall have seven members who shall be appointed by the Governor to serve terms of six years. They shall serve staggered terms commencing in odd-numbered years, so that two shall be appointed to serve a term beginning on April 1, 1969, and every six years thereafter; two shall be appointed to serve a term beginning on April 1, 1971, and every six years thereafter, and three shall be appointed to serve a term beginning on April 1, 1973, and every six years thereafter. Members of the State Board of Public Welfare in office when this section shall become effective shall serve until the expiration of the term for which they were appointed.

(b) Any vacancy in the Board which may arise shall be filled for the remainder of the term by appointment of the Governor.

(c) Each Governor shall designate one member of the Board to serve as chairman of the Board for so long as the Governor may deem to be desirable. The chairman shall serve during his term until a new chairman is appointed.

(d) The Board shall elect one member to be vice-chairman who shall serve as chairman in the absence of the chairman or if the chairman's position is vacant.

(e) The members of the Board shall receive the per diem allowances, travel expenses and subsistence that is customary for members of State boards and commissions as provided by G.S. 138-5. (1868-9, c. 170, s. 1; Code, s. 2331; Rev., s. 3913; 1909, c. 500; 1917, c. 170, s. 1; C. S., s. 5004; 1937, c. 319, s. 1; 1943, c. 775, s. 1; 1945, c. 43, s. 1; 1963, c. 392; 1969, c. 546, s. 1.)

Editor's Note. — Section 3 of Session Laws 1969, c. 546, revising this chapter, provides that the act shall be effective July 1, 1969.

§ 108-3. Meetings of Board.—The Board of Social Services shall meet at least quarterly and whenever called in session by the chairman, or when requested by four or more members. It shall make such rules for the regulation of its own proceedings as it may deem proper. (1868-9, c. 170, s. 2; Code, s. 2332; Rev., ss. 2807, 3914; 1909, c. 899; 1917, c. 170, s. 1; C. S., s. 5005; 1969, c. 546, s. 1.)

§ 108-4. Powers and duties.—The Board of Social Services shall have the following powers and duties:

(1) To appoint, with the approval of the Governor, a qualified person to be the administrative head of the social service programs of the Board and who shall be known as the Commissioner of Social Services.

(2) To authorize the making of arrangements and contracts with other State agencies or private organizations or units of local governments, whereby such agencies, organizations or units provide services or act as the agents of the Board in providing any of the services authorized by this Chapter.

(3) To authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(4) To adopt policies that may be necessary or desirable for the administration of the programs of public assistance established by federal legislation and by Article 2 of this Chapter.

(5) To ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and services to residents and nonresidents of this State.

(6) To adopt policies to achieve maximum cooperation with other agencies of this State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance attain self-support or self-care.

(7) To adopt policies for the placement and supervision of dependent and delinquent children, and the payment of the necessary costs of foster home care for needy and homeless children as provided by G.S. 108-66.

(8) To adopt standards for the inspection and licensing of foster homes for children and persons or organizations which receive and place children for adoption.

(9) To adopt standards for the inspection and licensing of maternity homes as provided by G.S. 108-76.

(10) To adopt standards for the inspection and licensing of all boarding

homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77.

(11) To adopt standards for the inspection and licensing of private child-care institutions as provided by G.S. 108-78.

(12) To approve standards for the inspection and operation of jails or local confinement facilities as provided by G.S. 153-51 and Part 3 of Article 3 of this Chapter.

(13) To adopt standards for the payment of the costs of necessary day care for minor children of needy families.

(14) To adopt standards for the inspection and licensing of nonmedical, privately operated homes and institutions, as provided by G.S. 122-72.

(15) To adopt standards for the regulation and licensing of public solicitors as provided by Article 3 of this Chapter.

(16) To authorize the furnishing to the federal government or any of its agencies any certification services that may be required or authorized under the Social Security Act, and to accept reimbursement from the federal government for such services.

(17) To adopt policies for administration of a central registry of cases of child abuse and neglect reported pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes, to the end that data concerning child abuse and neglect will be available for the protection of children within the State and for appropriate study and research while the identity of the children and families involved in such reports is protected as the Board finds appropriate. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1971, c. 643; c. 710, s. 4.)

Editor's Note.—The first 1971 amendment added subdivision (16).

The second 1971 amendment, effective July 1, 1971, added subdivision (17).

Part 2. The Department of Social Services.

§ **108-5. Created.**—There is hereby created the State Department of Social Services which shall administer the programs and services created by this article according to federal and State law and under the policies established by the rules and regulations of the State Board of Social Services. (1969, c. 546, s. 1.)

State Government Reorganization.—The Department of Social Services was transferred to the Department of Human Resources by § 143A-135, enacted by Session Laws 1971, c. 864.

§ **108-6. Commissioner.**—(a) The position of the Commissioner of Social Services is hereby created. The Commissioner shall be appointed by the State Board of Social Services with the approval of the Governor. The Commissioner's salary shall be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

(b) The Commissioner of Social Services shall have the following duties and responsibilities:

(1) To be the executive officer of the State Board of Social Services.

(2) To act as chief administrator of the State Department of Social Services and provide for the proper and efficient organization and operation of the Department, including the employment of necessary personnel.

(3) To formulate for the approval of said Board the agreements, rules, regulations, provisions and standards which the Board is authorized to ratify or adopt by G.S. 108-4.

(4) To administer for said Board those programs for which the Board is authorized by G.S. 108-4 to ratify or adopt agreements, rules, regulations, provisions and standards.

(5) To study social problems and other matters affecting the well-being of the citizens of North Carolina and to report on such matters to the State Board, including recommendations for action by the Board.

(6) To prepare and submit, with the approval of the State Board, a biennial report to the Governor, containing a complete description of the activities of the State Department of Social Services during the preceding two years with recommendations for improving the programs administered or supervised by the Department.

(7) To keep informed concerning new federal programs and changes in existing ones which might benefit the citizens of the State, and to report on such developments to the Board with recommendations for appropriate action by the Board.

(8) To serve in such other capacities as he may be appointed to serve by virtue of his office.

(9) To execute contracts and agreements on behalf of the State Board pursuant to the authority of the Board under G.S. 108-4 (2). (1969, c. 546, s. 1.)

Part 3. County Boards of Social Services.

§ **108-7. Creation.**—Every county shall have a board of social services which shall establish county policies for the programs established by this chapter in conformity with the rules and regulations of the State Board of Social Services and under the supervision of the State Department of Social Services. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ **108-8. Size.**—The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the State Department of Social Services. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ **108-9. Method of appointment; residential qualifications; fee or compensation for services.**—(a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the State Board of Social Services shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the State Board of Social Services shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular resident superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the State Board of Social Services and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Board of Social Services directly or indirectly only the fees and compensation as provided by G.S. 108-14. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 369.)

Editor's Note. — The 1971 amendment added subsection (c).

§ 108-10. Term of appointment.—Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-11. Order of appointment.—(a) Three-Member Board: The term of the member appointed by the State Board of Social Services shall expire on June 30, 1969, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1971, and every three years thereafter; and the term of the third member shall expire on June 30, 1970, and every three years thereafter.

(b) Five-Member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the State Board of Social Services shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the State Board. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-Member to Three-Member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

(1) The seat held by the member appointed by the State Board whose term would have expired on June 30, 1971, or triennially thereafter; and

(2) The seat held by the member appointed by the board of commissioners whose term would have expired on June 30, 1972, or triennially thereafter. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247. ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-12. Vacancies.—Appointments to fill vacancies shall be made in the manner set out in G.S. 108-9. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108-10. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-13. Meetings.—The board of social services of each county shall meet at least once per month or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-14. Compensation of members.**—Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners and travel expenses not to exceed the amounts provided by G.S. 138-5 for attendance at official meetings and conferences, provided such per diem or travel is authorized by the board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 124.)

Editor's Note. — The 1971 amendment substituted "in such amount as shall be established by the county board of commissioners" for "not to exceed ten dollars ($10.00)."

§ **108-15. Duties and responsibilities.**—The county board of social services shall have the following duties and responsibilities:

(1) To select the county director of social services according to the merit system rules of the State Personnel Board.

(2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community.

(3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services.

(4) To transmit or present the budgets of the county department of social services for public assistance and administration to the board of county commissioners.

(5) To have such other duties and responsibilities as the General Assembly or the State Board of Social Services or the board of county commissioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

§ **108-16. Inspection of records by members.**—Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and payments of public assistance authorized by this chapter. No member shall disclose or make public any information which he may acquire by examining such records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1.)

Part 4. County Director of Social Services.

§ **108-17. Appointment.** — (a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Board. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards and such boards may also combine any other functions or activities as authorized by G.S. 153-246. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-18. Salary.**—The board of social services of every county shall determine the salary of the director in accordance with the classification plan of the State Personnel Board, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1;

1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-19. Duties and responsibilities.—The director of social services shall have the following duties and responsibilities:

(1) To serve as executive officer of the board of social services and act as its secretary.
(2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Board.
(3) To administer the programs of public assistance established by this Chapter.
(4) To administer funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county board of social services.
(5) To act as agent of the State Board of Social Services in relation to work required by the State Board in the county.
(6) To investigate cases for adoption and to supervise adoptive placements.
(7) To issue employment certificates to children under the regulations of the State Department of Labor.
(8) To serve as chief probation officer for judges exercising juvenile jurisdiction in the county if the court does not have personnel available to provide juvenile probation services.
(9) To supervise children conditionally released from State institutions for juvenile delinquents where courts exercising juvenile jurisdiction do not have personnel for this purpose.
(10) To supervise boarding homes, rest homes and convalescent homes for aged or infirm persons, under the rules and regulations of the State Board.
(11) To investigate, prepare, and submit petitions for the sterilization of eligible county residents to the Eugenics Board of North Carolina and to arrange for operations authorized by said Board.
(12) To assist and cooperate with the Board of Paroles and the Probation Commission and their representatives.
(13) To keep informed of the condition of persons discharged from hospitals for the mentally ill.
(14) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 8 of Chapter 110 of the General Statutes.
(15) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 710, s. 5.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote subdivision (14).

Part 5. Special County Attorneys for Social Service Matters.

§ 108-20. Appointment.—With the approval of the board of social services, the board of commissioners of any county may appoint a licensed attorney to serve as a special county attorney for social service matters, or designate the county attorney as special county attorney for social service matters. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-21. Compensation.—The special county attorney for social service matters shall receive compensation for the performance of his duties and for his expenses in such amount as the board of commissioners may provide. His compensation shall be a proper item in the annual budget of the county department of social services. (1959, c. 1124, s. 1; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-22. Duties and responsibilities.**—(a) The special county attorney shall have the following duties and responsibilities:

(1) To serve as legal advisor to the county director, the county board of social services, and the board of county commissioners on social service matters.
(2) To represent the county, the plaintiff, or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act and to exercise continuous supervision of compliance with any order entered in any proceeding under that act.
(3) To represent the county board of social services in appeal proceedings and in any litigation relating to appeals.
(4) To discharge the duties of the county attorney in respect to the lien created by G.S. 108-29, if such duties be assigned to him by the board of county commissioners with the consent and approval of the county attorney.
(5) To assist the district court prosecutor or superior court solicitor with the preparation and prosecution of criminal cases under article 40 of chapter 14 of the General Statutes, entitled "Protection of the Family."
(6) To assist the district court prosecutor or superior court solicitor with the preparation and prosecution of proceedings authorized by chapter 49 of the General Statutes, entitled "Bastardy."
(7) To perform such other duties as may be assigned to him by the board of county commissioners, the board of social services, or the director of social services.

(b) In performing any of the duties and responsibilities set out in this section, the special county attorney is authorized to call upon any director of social services or the State Department of Social Services for any information as he may require to perform his duties, and such director and Department are directed to assist him in performing such duties. (1959, c. 1124, ss. 2, 3; 1969, c. 546, s. 1.)

ARTICLE 2.

Programs of Public Assistance.

§ **108-23. Creation of programs.**—The following programs of public assistance are hereby established, and shall be administered by the county departments of social services under policies adopted by the State Board of Social Services and under the supervision of the State Department of Social Services:

(1) Aid to the aged and disabled;
(2) Aid to families with dependent children;
(3) General assistance;
(4) Medical assistance, and
(5) Foster home fund. (1937, c. 135, s. 1; c. 288, ss. 3, 31; 1949, c. 1038, s. 2; 1955, c. 1044, s. 1; 1957, c. 100, s. 1; 1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ **108-24. Definitions.**—As used in Article 2:

(1) "Applicant" is any person who requests assistance or on whose behalf assistance is requested.
(2) "Assistance" is money payments, medical care, remedial care, and goods or services, to or for eligible persons.
(3) "Dependent child" is a person under 18 years of age who is living with a natural parent, adoptive parent, stepparent, or any other person re-

lated by blood, marriage, or legal adoption, in a place of residence maintained by one or more of such persons as his or their own home, and who is deprived of parental support; it shall also include a minor living in a foster-care facility or child-caring institution.

(4) "Medical assistance" is any program of medical, dental, optometric or other health-related services approved by the State Board of Social Services.

(5) "Permanently and totally disabled" is a person who has a physical or mental impairment which substantially precludes him from obtaining gainful employment, and such impairment appears reasonably certain to continue without substantial improvement throughout his lifetime.

(6) "Recipient" is a person to whom, or on whose behalf, assistance is granted under this Article.

(7) "Resident" is a person who has resided continuously within the State of North Carolina for at least one year prior to the date on which application for assistance to him is made with a county department of social services. (1937, c. 288, ss. 4, 32; 1939, c. 395, s. 1; 1949, c. 1038, s. 2; 1951, c. 1098, ss. 3, 4, 5; 1957, c. 100, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one" in subdivision (3).

Residency Requirement for Receipt of Welfare Benefits Unenforceable.—See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 2/9/70.

Part 1. Aid to the Aged and Disabled.

§ **108-25. Eligibility requirements.**—Assistance shall be granted to any person who:

(1) Is sixty-five (65) years of age and older, or is between the ages of eighteen and sixty-five and is permanently and totally disabled;

(2) Has insufficient income or other resources to provide a reasonable subsistence compatible with decency and health as determined by the rules and regulations of the State Board of Social Services;

(3) Is a resident of North Carolina;

(4) Shall agree in writing that the amount of assistance granted him under this article shall constitute a lien against his real property or a claim against his estate. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1; 1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, cc. 788, 1085; 1969, c. 546, s. 1.)

Residency Requirement for Receipt of Welfare Benefits Unenforceable.—See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 2/9/70.

§ **108-26. Determination of disability.**—(a) An applicant between the ages of 18 and 65 seeking assistance under this part must be found to be permanently and totally disabled as defined in G.S. 108-24 by a physician or by a medical review board in his county of residence; such physician or board must submit any findings of disability to the county department of social services for transmittal to the State Department of Social Services.

(b) All applications for assistance as a permanently and totally disabled person shall be reviewed by medical consultants employed by the State Department of Social Services. The final decision on the disability factor shall be made by such medical consultants under rules and regulations adopted by the State Board of Social Services. (1963, c. 788; 1969, c. 546, s. 1.)

§ **108-27. Direct payments for nursing and custodial care.** — (a) The State Department is authorized and empowered to make payments to duly licensed nursing homes or extended care facilities for persons eligible to receive assistance to the aged and disabled when nursing care is found to be essential for such persons by the State Department under the rules and regulations of the State Board of Social Services.

(b) The State Department is authorized and empowered to make payments to family care homes, homes for the aged and intermediate care homes for persons eligible to receive assistance to the aged and disabled when such facilities are found to be essential for such persons by a county department of social services under the rules and regulations of the State Board of Social Services. (1967, c. 1211, s. 2; 1969, c. 546, s. 1.)

§ **108-28. Limitations on payments.**—No payment of public assistance derived from federal, State or local sources shall be made for the care of any person in a nursing home, home for the aged, family care home, or intermediate care home which is owned or operated in whole or in part by any of the following:

(1) A member of the State Board of Social Services, of any county board of social services, or of any board of county commissioners;

(2) An official or employee of the State Department of Social Services or of any county department of social services;

(3) A spouse of a person designated in subdivisions (1) and (2). (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48; 1967, c. 983; 1969, c. 546, s. 1.)

§ **108-29. Creation of claim and lien on property.**—There is hereby created a general claim and a lien, enforceable as hereinafter provided, upon the real property of any person who receives assistance to the aged and disabled. The claim and the lien shall be for the total amount of assistance paid to such person from and after October 1, 1951, if the recipient receives assistance as an aged person, or October 1, 1963, if the recipient receives assistance as a permanently and totally disabled person. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 1.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

For note on the North Carolina public assistance lien law and current constitutional doctrine, see 49 N.C.L. Rev. 519 (1971).

No Lien on Property Conveyed Prior to Receipt of Welfare Payments.—See opinion of Attorney General to Mr. Philip P. Godwin, County Attorney for Gates County, 1/16/70.

No Welfare Lien on Realty of Husband for Welfare Payments to Wife by Virtue of Husband's Duty to Support Wife.—See opinion of Attorney General to Mr. W.H. Childs, Sr., Lincoln County Attorney, 3/5/70.

Opinions of Attorney General. — Mr. Ray Jennings, Alexander County Attorney, 7/7/69; Mr. Rom B. Parker, Halifax County Attorney, 7/9/69.

§ **108-30. Procedure for filing lien.**—After the approval of assistance to an applicant under this part, the county director of social services shall file a statement showing the name of the applicant and the date of approval of the application in the office of the clerk of the superior court in the county of the recipient's residence and in each county where he owns or subsequently owns real property. Such statement shall be filed in the regular lien docket, showing the name of the county filing the statement as claimant or lienor, and the name of the recipient as owner or lienee, and it shall be indexed in the name of the lienee in the defendant's, or reverse alphabetical, side of the cross index to civil judgments. The county shall appear as plaintiff, or lienor, in such index. No cross index in the name of the county, or lienor, shall be required. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 2.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, substituted "of approval of the application" for "he received his first payment of public assistance" in the first sentence.

§ 108-31. Effect of filing.—From the date on which the statement required by G.S. 108-30 is filed, the statement shall be and constitute due notice of a lien against the real property owned by the recipient and lying in the county to the extent of the total amount of assistance given the recipient after the proper date shown in G.S. 108-29. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1.)

Opinions of Attorney General. — Mr. Ray Jennings, Alexander County Attorney, 7/7/69.

§ 108-32. Priority of claim; priority of lien. — (a) The claim created against the estate of the recipient shall have equal priority in order of payment with the sixth class under G.S. 28-105 and shall be subordinate to the debts, expenses taxes, dues and judgments of the first five classes as provided by G.S. 28-105.

(b) The priority of the lien created on the real property of the recipient shall be determined in accordance with the laws governing priority of liens against real estate; and, if real property of a deceased recipient is sold in a judicial sale, including a sale pursuant to an order made in an action in court to foreclose a lien created by this chapter, an order to foreclose a mortgage or deed of trust, an order of a sale to create assets to pay debts; or if real property of a deceased recipient is sold pursuant to a power of sale contained in a mortgage or deed of trust, or granted by statute with respect to a mortgage or deed of trust; or sold in an execution sale, tax foreclosure sale or any sale pursuant to a court order, the proceeds of the sale, except for an amount necessary to pay funeral expenses but not to exceed the amount specified for the priority of funeral expenses in G.S. 28-105, are to be treated as real property; and the priority of the lien provided for herein is to be determined with respect to such funds as if they were real property.

(c) The board of county commissioners and the county board of social services of the county in which the recipient resides may subordinate such lien to a mortgage or lien created against the property of such recipient for necessary repairs or improvements on the property, whether title to the property is held by the recipient alone or by the entirety with the recipient's spouse. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, ss. 1, 2; 1957, cc. 1107, 1273; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 3.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

The primary intent in creating the general lien was to secure the county against a third party's acquiring a superior interest in the real estate of the recipient. Brunswick County v. Vitou, 6 N.C. App. 54, 169 S.E.2d 234 (1969).

Claim Must Be First Satisfied from Personal Property.—When old age assistance was terminated by death of the recipient, the county's claim against the recipient's estate under former § 108-30.1 must be satisfied out of the personal property in the estate to the extent it was sufficient to pay claims of the sixth class (under § 28-105) before resorting to the real property for satisfaction of the debt. Brunswick County v. Vitou, 6 N.C. App. 54, 169 S.E.2d 234 (1969).

County Attorney May Not Elect What Assets to Proceed Against. — The legislature, by creating the general lien under former § 108-30.1, did not intend that the county attorney, or any other person, should have the option of electing what assets of the estate to proceed against to enforce the lien. Brunswick County v. Vitou, 6 N.C. App. 54, 169 S.E.2d 234 (1969).

Priority of Demolition Lien over Welfare Lien.—See opinion of Attorney General to Mr. Cicero P. Yow, Wilmington City Attorney, 2/23/70; Mr. James C. Fox, New Hanover County Attorney, 2/25/70.

Opinions of Attorney General. — Mr. Rom B. Parker, Halifax County Attorney, 8/27/69.

§ 108-33. Statute of limitations on lien.—The lien created by G.S. 108-29 shall continue from the date of filing until satisfied, provided that any such lien which has been filed more than ten years prior to January 1, 1970, and any such lien which shall become ten years old thereafter shall expire unless an additional statement of such lien is filed and properly indexed as required by G.S. 108-30, prior to the date of such expiration; provided further that no action to enforce the lien may be brought more than ten years after the last day on which assistance was paid nor more than three years after the date of the recipient's death. Failure to bring action within such times shall be a complete bar against any recovery and shall extinguish the lien. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 4.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote the first sentence.

Opinions of Attorney General. — Mr. Ira T. Johnston, Ashe County Attorney, 8/26/69.

§ **108-34. Limitations on enforcement.**—No action to enforce the lien created by G.S. 108-29 may be brought upon any real property as long as the property is being occupied as a homesite by the former recipient or, in the event of his death, by the surviving spouse, by a dependent minor child of the recipient, or by a dependent adult child of the recipient who is incapable of self-support because of a mental or physical disability. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, ss. 1, 2; 1957, cc. 1107, 1273; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1.)

§ **108-35. Notification of lien on termination of assistance.**—The county department of social services shall, within six months after the termination of an aid to the aged and disabled grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination or from any other information which has come to the attention of the department,

(1) That such recipient does not own, or has not owned since the date of the filing of the lien against such recipient's realty, any real property, and
(2) That such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars ($100.00), and
(3) In the case of a termination because of death, that no executor, administrator, collector or other personal representative has been appointed

an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department,

(1) That such recipient does own, or has owned since the date of the filing of the lien against such recipient's realty, any property, or
(2) That such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars ($100.00), or
(3) In case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed,

then the department shall furnish to the county attorney all available information concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the total amount of aid to the aged and disabled assistance received by the recipient from and after October 1, 1951, in the case of a recipient of aid to the aged, and October 1, 1963, in the case of a recipient of aid to the disabled, by or through the State and the several counties thereof, and the reason for termination of the grant. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

Opinions of Attorney General. — Mr. Ray Jennings, Alexander County Attorney, 7/7/69.

§ **108-36. Enforcement of lien.**—Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of assistance does not exceed one hundred dollars ($100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court. (1951, c. 1019, s. 1; 1955, c. 237, s. 2; 1957, c. 1273; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

Opinions of Attorney General. — Mr. Ira T. Johnston, Ashe County Attorney, 8/26/69.

§ **108-37. Distribution of funds collected.**—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid aid to the aged or disabled assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county aid to aged and disabled fund and a report of such deposit made to the State Board of Social Services. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Aid to the Aged and Disabled Fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled; provided, that neither the United States nor the State shall in any instance be chargeable for costs in excess of the sum received by it from the claim. Necessary costs of collection of any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1951, c. 1019, s. 1; 1955, c. 237, s. 3; 1963, c. 1085; 1969, c. 546, s. 1; c. 1165, s. 5.)

Editor's Note. — Session Laws 1969, c. 1165, effective July 1, 1969, rewrote this section.

§ **108-37.1. Release of realty from the lien; effect of failure to file release in clerk's office.**—The county commissioners are authorized to release a specific tract or parcel of realty from a lien described in this article, before or after the termination of a grant of assistance which is the subject of the lien, based upon any circumstances from which the commissioners are satisfied that the release will result in the largest net recovery for the county, State and federal governments, or a net recovery as large as would be made in any other manner. The release shall be by duly executed resolution which shall recite the reasons for the release and the consideration received therefor. The release shall contain a full description of the tract or parcel released and the nature and extent of the interest of the lienee in the property released. The commissioners shall cause the original or a duly executed copy of the original of the release to be filed and indexed in the office of the clerk of superior court in the same place and manner as is required for liens provided for under this article. Whether or not in any case the commissioners have, through inadvertence or otherwise, failed to have the release filed and indexed in the office of the clerk, it is hereby expressly provided that except from the time of the filing and indexing of the release in the clerk's office in the same place and manner as is required for liens provided for under this article, no release of lien provided for herein shall be valid as against any lien creditor, except one whose lien is one released as herein provided, or as against any purchaser for a valuable consideration, whose lien or interest or claim of lien or interest in the property released would be nullified, adversely affected, or diminished by the release. (1969, c. 1216, s. 1.)

Editor's Note. — Session Laws 1969, c. 1216, s. 3, makes the act effective July 1, 1969.

For note on the North Carolina public assistance lien law and current constitutional doctrine, see 49 N.C.L. Rev. 519 (1971).

Part 2. Aid to Families with Dependent Children.

§ 108-38. Eligibility requirements.—Assistance shall be granted to any dependent child, as defined in G.S. 108-24, who:

(1) Is a resident of the State or whose mother was a resident when the child was born;

(2) Has been deprived of parental support or care by reason of a parent's death, physical or mental incapacity, or continued absence from the home;

(3) Has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1; 1967, c. 660; 1969, c. 546, s. 1.)

Editor's Note.—For note on illegitimacy in North Carolina, see 46 N.C.L. Rev. 813 (1968).

For note on the "man in the house" or "substitute parent" rule in determining eligibility for aid to dependent children, see 47 N.C.L. Rev. 228 (1968).

Residency Requirement for Receipt of Welfare Benefits Unenforceable. — See opinion of Attorney General to Mr. Robert H. Ward, Assistant Commissioner, Department of Social Services, 2/9/70.

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee.—See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 2/18/70.

§ 108-39. Limitations on eligibility. — (a) No assistance shall be granted to any dependent child who:

(1) Has passed his sixteenth birthday and has the ability and capacity for gainful employment, unless he is regularly enrolled and attending school or unless no gainful employment is available, except that a dependent child over sixteen years of age and attending school is not eligible for assistance during the summer months unless no gainful employment is available;

(2) Has passed his eighteenth birthday unless he is regularly attending and successfully pursuing (i) a course of study leading to a high school diploma or its equivalent, (ii) a course of study at the college level, or (iii) a course of vocational or technical training designed to fit him for gainful employment.

(b) No parent shall be made the payee of assistance granted under this part who has the ability and capacity for gainful employment but who is not employed either on a part or full-time basis unless the parent is needed in the home to provide continuous care for or supervision over the child in the home or an incapacitated member in the household, or unless no gainful employment is available.

(c) Any child or parent required to engage in gainful employment but who cannot obtain such employment shall register with an employment service and make reasonable and continuous efforts to find gainful employment and provide such proof of his registration and efforts as the State Board of Social Services may require. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2; 1969, c. 546, s. 1; 1971, c. 283.)

Editor's Note. — The 1971 amendment substituted "State Board of Social Services" for "county department of social services" in subsection (c).

Eligibility of Children for Aid to Families with Dependent Children Although Parent Does Not Qualify as a Payee.— See opinion of Attorney General to Colonel Clifton M. Craig, Commissioner, Department of Social Services, 2/18/70.

§ 108-39.1. Work incentive program adopted; evidence of refusal to participate in special work projects; protective and vendor payments. —(a) The provisions of Part C of Title IV of the Federal Social Security Act pertaining to the work incentive program for recipients of aid to families with dependent children assistance, and the benefits thereunder, are hereby accepted and adopted.

(b) The work incentive program provided for by this section is a part of, and subject to all the same provisions of law as, the aid to families with dependent children program provided for in this article; except that in the case of inconsistent provisions, the provisions of this section shall be deemed exceptions to other provisions of law in this article.

(c) Written notice of a finding by the United States Secretary of Labor, or the United States Department of Labor, the Employment Security Commission, or other authorized agent of the Secretary of Labor as to whether a person has refused without good cause to accept employment or participate in a project shall be binding upon the State and its agencies and the political subdivisions of the State. Any other provision of law to the contrary notwithstanding, the original or copy of such a notice bearing the certification of a State or county agency that it is the original or true copy of the original in or from the records of the agency shall be admissible in evidence without the appearance of a witness, and it shall be prima facie evidence that it was duly received by the agency from the Secretary of Labor or his authorized agent.

(d) In accordance with the provisions of Title IV of the Federal Social Security Act, the Governor shall appoint the members of, and designate the chairman of, at least one panel to be designated special work projects panel. The Governor may create as many such panels as in his judgment are necessary and the members shall serve at his pleasure. The panels shall review applications tentatively approved by the Secretary of Labor for the special work projects to be established by the Secretary of Labor under the program established by section 432 (b) (3) of Title IV of the Social Security Act. Each panel shall consist of not more than five and not less than three members. The members shall include one representative of employers and one representative of employees, and the remainder shall be representatives of the general public. No special work project under a program developed by the Secretary pursuant to an agreement under section 433 (e) (1) of the Social Security Act shall be established or maintained under such program unless the project has first been approved by a panel created under this section.

(e) The times, frequency, places and duration of the meetings of the panels shall be as required by the Governor, except as modified by authority delegated by the Governor to the panels or their chairmen. Compensation of the panel members shall be in accordance with the provisions of G.S. 108-35 as in the case of other boards and committees.

(f) The Governor may enter into agreements with the United States Secretary of Labor for the creation and operation of the panels. The agreements and the provisions of this section shall be in accordance with and subject to the lawful requirements of the Secretary of Labor in accordance with the Social Security Act.

(g) Protective and vendor payments required to be made under the work incentive program shall be made in accordance with the rules and regulations of the

State Board of Social Services, which rules and regulations shall be subject to the lawful requirements of the Secretary of Labor. (1969, c. 739, s. 2.)

Editor's Note. — Session Laws 1969, c. 739, s. 1, provides: "This act shall be known as the Public Welfare Work Incentive Program Act of 1969." Session Laws 1969, c. 739, s. 4, makes the act effective July 1, 1969.

Part 3. The Administration of Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-40. Application for assistance.—Any person who believes that he or another person is eligible to receive aid to the aged and disabled or aid to families with dependent children may submit an application for assistance to the county department of social services. It shall be made in such form and shall contain such information as the State Board of Social Services may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-41. Investigation of applicant.—Upon receipt of an application for public assistance, the county department shall make a prompt evaluation or investigation of the facts alleged in the application in order to determine the applicant's eligibility for assistance and to obtain such other information as the State Department of Social Services may require. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1.)

§ 108-42. The granting or denial of assistance. — (a) The county director of social services shall submit his findings and recommendations on each application for aid to the aged and disabled and aid to families with dependent children to the county board of social services at its next meeting for its approval of assistance in each case, except that the disability factor of applications for aid to the disabled shall be finally determined by the State Department of Social Services as provided in G.S. 108-26.

(b) The county board of social services may delegate authority to the director to consider and process applications for assistance in all cases that require immediate action to prevent undue hardship; in such cases, the director shall report on his actions to the board at its next meeting, and the board shall approve, reject or modify such decisions.

(c) The board of county commissioners may review any grant approved by the county board of social services. The recipient of a disputed grant shall receive notice of the time and place of such review. If the board of commissioners deems that a grant was improperly allowed under the policies of the State Board of Social Services, it may order that proper action be taken, with notice thereof given to the recipient and a copy to the county board of social services and the Commissioner of Social Services. Any modification made by the board of county commissioners shall be subject to review by the Commissioner of Social Services.

(d) All rules and regulations of the State Board of Social Services which govern eligibility for public assistance from State appropriations or the amount of public assistance grants shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1937, c. 288, ss. 15, 16, 45, 46; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 523, s. 1.)

Editor's Note. — The 1971 amendment added the language beginning "with notice thereof" at the end of the second sentence of subsection (c), deleted the former third sentence of subsection (c), which required the board of commissioners to notify the recipient, the county director of social services, and the State Department of Social Services of any changes made in the grants, and added the present third sentence of subsection (c).

§ **108-43. Reconsideration of grants.**—All grants of public assistance shall be considered as frequently as required by the rules of the State Board. Whenever the condition of any recipient has changed to the extent that his award must be modified or terminated, the county director may make the appropriate termination or change in payment and submit it to the county board of social services for approval at its next meeting. Prompt notice of all changes shall be given to the recipient, to the State Department of Social Services, and to the board of county commissioners. (1937, c. 288, ss. 19, 49; 1969, c. 546, s. 1; 1971, c. 523, s. 2.)

Editor's Note. — The 1971 amendment substituted "considered" for "reconsidered" in the first sentence and "State Department of Social Services" for "State Board" in the third sentence.

Authority of State Board to Order a Uniform Raise in Welfare Payments Without Processing Each File.—See opinion of Attorney General to Commissioner Clifton M. Craig, State Department of Social Services, 1/21/70.

§ **108-44. Appeals.**—(a) A public assistance applicant or recipient shall have a right to appeal the decision of the county board of social services or the board of county commissioners granting or denying assistance, or modifying the amount of assistance, or the failure of the county board of social services to act within a reasonable time under the rules and regulations of the State Board of Social Services, to the Commissioner of Social Services. Each applicant or recipient shall be notified of this right to appeal when applying for assistance and upon any subsequent action of the county board on his case. An applicant or recipient may give notice of appeal by written notice to the county department of social services or through verbal notice to personnel employed by said county department.

(b) If there is such an appeal, the county director shall notify the State Department of Social Services according to the rules and regulations of the State Board of Social Services, and the State Department shall designate a hearing officer who shall promptly hold an appeal hearing in the county after giving reasonable notice of the time and place of such hearing to the appellant and the county department of social services.

(c) At the appeal hearing before the hearing officer, the appellant and personnel of the county department of social services shall present such facts as may bear upon the case. After such hearing, the hearing officer shall forward a transcript of the hearing to the State Department of Social Services, to the county department of social services, and to the appellant or his attorney, which transcript or other documents considered at the appeal hearing shall serve as the basis for the Commissioner's decision on such appeal.

(d) The Commissioner of Social Services shall make a decision on such appeal in conformity with federal and State law and the rules and regulations of the State Board of Social Services. The Commissioner shall notify the appellant and the county board of social services of his decision in writing by mail. The decision of the Commissioner on such an appeal shall be binding upon the county board of social services and the board of county commissioners unless there is a petition for court review as provided in (e) herein.

(e) Any appellant or county board of social services who is dissatisfied with the decision of the Commissioner may file a petition within thirty days after receipt of written notice of such decision for a hearing in the Superior Court of Wake County or of the county from which the case arose. Such court shall set the matter for a hearing within thirty days after receipt of such petition and after reasonable written notice to the State Department of Social Services, the county board of social services, the board of county commissioners, and the appellant. The court may take testimony and examine into the facts of the case to determine whether the appellant is entitled to public assistance under federal and State law, and under the rules and regulations of the State Board of Social Services. The court may affirm, reverse or modify the order of the Commissioner.

(f) If and when any federal law or regulation requires, as a condition of federal participation in public assistance payments, that public assistance applicants or recipients be furnished with the services of attorneys for the purpose of appeals described in this section or for the purpose of litigation arising out of such appeals, the services of attorneys shall be provided as required by the federal law or regulation, to the extent that funds are made available as hereinafter provided, in accordance with rules and regulations approved by the Governor, the Advisory Budget Commission, the State Board of Social Services and the North Carolina State Bar Council. To the extent permitted by the rules and regulations thus approved, payment for the services of attorneys shall be made by the State Board of Social Services from funds transferred from contingency and emergency appropriations until such time as funds are appropriated for the services of attorneys.

(g) If and when federal laws, or lawful regulations made pursuant to applicable federal laws are enacted requiring that, as a condition for federal participation in the costs of public assistance provided for in this chapter, assistance payments must be continued pending the outcome of a hearing or litigation or informal contact with an assistance recipient, assistance shall be continued in accordance with such federal laws or regulations. (1937, c. 288, ss. 18, 48; 1939, c. 395, s. 1; 1957, c. 100, s. 1; 1969, c. 546, s. 1; cc. 735, 754.)

Editor's Note.—Session Laws 1969, c. 735, added subsection (f). Session Laws 1969, c. 754, added subsection (g).

§ 108-45. Confidentiality of records.—(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance that may be directly or indirectly derived from the records, files or communications of the State Board or the county boards of social services, or acquired in the course of performing official duties except for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the State Board.

(b) The Department of Social Services shall furnish a complete list of names, addresses, and amounts of monthly grants of all persons receiving payments under all programs of public assistance administered under the supervision of the Department to the auditor of each county at least semiannually. This list shall be a public record open to public inspection during the regular office hours of the county auditor. The list, or any part of it, may not be published in any newspaper or periodical nor used for any commercial or political purpose. Any person so using it or using it for any other purpose not directly connected with the administration of public assistance shall be guilty of a misdemeanor. (1937, c. 288, ss. 15, 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; c. 882, ss. 1, 2, 4; 1959, c. 179, ss. 1, 2; 1961, c. 186; 1969, c. 546, s. 1.)

Opinions of Attorney General. — Mr. John Blackwell, Jr., Special Attorney for the Cumberland County Department of Social Services, 10/17/69.

§ 108-46. Removal to another county.—Any recipient who moves from one county to another county of this State shall continue to receive public assistance if eligible. The county director in the county from which he has moved shall transfer all necessary records relating to the recipient to the county director of the county to which the recipient has moved. The county from which the recipient moves shall pay the amount of assistance to which the recipient is entitled for a period of three months following his move, and thereafter the county to which the recipient has moved shall pay such assistance. (1937, c. 288, ss. 20, 50; 1943, c. 505, ss. 3, 7; 1961, c. 186; 1963, c. 136; 1969, c. 546, s. 1.)

§ 108-47. Assistance not assignable; checks payable to decedents.—The assistance granted by this Article shall not be transferable or assignable at law or in equity; and none of the money paid or payable as assistance shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an assistance recipient during or after the first day of the month for which a grant was previously authorized by the county social services board, any assistance check or checks payable to such recipient not endorsed prior to such recipient's death shall be delivered to the clerk of superior court and by him administered under the provisions of G.S. 28-68 through G.S. 28-68.3. (1937, c. 288, ss. 17, 47; 1945, c. 615, s. 1; 1953, c. 213; 1969, c. 546, s. 1; 1971, c. 446, ss. 1, 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the second paragraph.

§ 108-48. Fraudulent misrepresentation.—Any person who wilfully and knowingly, with the intent to deceive, makes a false statement or representation or fails to disclose a material fact in order to enable himself or another person to obtain or to continue to receive assistance to which he is not entitled, is guilty of a misdemeanor, and upon conviction or plea of guilty shall be fined or imprisoned or both at the discretion of the court. (1937, c. 288, ss. 27, 57; 1963, cc. 1013, 1024, 1062; 1969, c. 546, s. 1.)

§ 108-49. Personal representative for mismanaged grants. — (a) Whenever a county director of social services shall determine that a recipient of assistance is unwilling or unable to manage assistance grants to the extent that deprivation or hazard to himself or others results, the director shall file a petition before a district court or the clerk of superior court in the county alleging such facts and requesting the appointment of a personal representative to be responsible for receiving such grants and to use them for the benefit of the recipient.

(b) Upon receipt of such petition, the court shall promptly hold a hearing, provided the recipient shall receive five days' notice in writing of the time and place of such hearing. If the court, sitting without a jury, shall find at the hearing that the facts alleged in the petition are true, it may appoint some responsible person as personal representative. The personal representative shall serve without compensation and be responsible to the court for the faithful performance of his duties. He shall serve until the director of social services or the recipient shows to the court that the personal representative is no longer required or is unsuitable. All costs of court relating to proceedings under this section shall be waived.

(c) Any recipient for whom a personal representative is appointed may appeal such appointment to superior court for a hearing de novo without a jury.

(d) All findings of fact made under the proceedings authorized by this section shall not be competent as evidence in any case or proceeding which concerns any subject matter other than that of appointing a personal representative. (1959, c. 1239, ss. 1, 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ 108-50. Protective and vendor payments. — Instead of the use of personal representatives provided for by G.S. 108-49, when necessary to comply with any present or future federal law or regulation in order to obtain federal participation in public assistance payments, the payments may be made direct to vendors to reimburse them for goods and services provided the applicants or recipients, and may be made to protective payees who shall act for the applicant or recipient for receiving and managing assistance. Payments to vendors and protective payees shall be made to the extent provided in, and in accordance with, rules and regulations of the State Board of Social Services, which rules and regulations shall be subject to applicable federal laws and regulations. (1963, c. 380; 1969, c. 546, s. 1; c. 747.)

Editor's Note.—Session Laws 1969, c. 747, effective July 1, 1969, rewrote this section.

Part 4. Financing Aid to the Aged and Disabled and Aid to Families with Dependent Children.

§ 108-51. Acceptance of grants-in-aid. — The State Department of Social Services is hereby authorized to accept all grants-in-aid for the programs of public assistance established under this article which may be available to the State by the federal government under the Social Security Act. The provisions of this article shall be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. (1937, c. 288, ss. 5, 33; 1969, c. 546, s. 1.)

§ 108-52. Transfer of funds to counties.—(a) A State fund for each program of public assistance established under this article is hereby created from the federal and State appropriations to such program. Each State fund shall be drawn out on the warrant of the State Treasurer and issued upon order of the Commissioner of Social Services. Quarterly, or more often if the State Board directs, the Commissioner shall transfer to each county that part of the county's allotment from each State fund that the county is required to disburse for its public assistance programs during the appropriate period. Before transferring such funds, the Commissioner may require that the county certify, through its auditor or fiscal agent, that sufficient county funds are available to pay the county's share of the public assistance expenditures corresponding to the amount of State money to be transferred.

(b) The Commissioner may transfer to any county an amount sufficient to pay in full the grants approved in that county for the first quarter in any fiscal year. One fourth of this amount shall be advanced in anticipation of the collection of taxes and shall be deducted from future allotments within the same fiscal year to that county.

(c) When the Commissioner finds that the disbursement of funds by a county to qualified recipients is being unduly delayed, or that payments to recipients are jeopardized, he may require that grants be promptly paid as a condition for the allotment or transmission of State monies to the county. State monies may be withheld until the Commissioner is satisfied that the county is paying the grants promptly.

(d) When the State Board of Social Services finds it to be in the public interest to require more adequate protection of funds collected in the county for disbursement to recipients, or the more prompt, efficient and certain payment of grants to recipients, the Commissioner may demand and require that the funds raised by taxation in any county be transmitted to the State Treasurer. The Commissioner shall, in such cases, give notice to the board of county commissioners and to the county officials having such funds in their custody. The board of county commissioners and responsible officials shall immediately transfer all such funds to the State Treasurer for disbursement under rules and regulations established by the State Board of Social Services. (1937, c. 288, ss. 24, 54; c. 405; 1943, c. 505, s. 10; 1969, c. 546, s. 1.)

§ 108-53. Allocation of nonfederal shares.—(a) The nonfederal share of the annual cost of each public assistance program may be divided between the State and the counties in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State.

(b) The nonfederal share of the annual cost of public assistance provided to Indians living on federal reservations held in trust by the United States on their behalf shall be borne entirely by the State. The Commissioner shall reserve from State appropriations for public assistance an amount sufficient to pay the county's share of the cost of public assistance to eligible Indian residents of federal reservations, plus related administrative costs incidental to providing such assistance, and shall pay same to counties containing such a federal reservation. (1965, c. 708; 1969, c. 546, s. 1.)

State Must Pay All Nonfederal Share of Medicaid Benefits for Indians Living on Federal Reservation.—See opinion of Attorney General to Mr. Clifton M. Craig, Commissioner, Department of Social Services, 10/29/70.

§ **108-54. Determination of county expenditures.**—Before March 15 of each year, the director of social services of every county shall compile and submit to the county board of social services an estimate of total funds required to finance each program of public assistance within the county in the next fiscal year on forms furnished by the State Department of Social Services. The county board shall review, modify, and approve such estimate and transmit it before April 1 to the board of county commissioners, which shall review, modify and approve it before April 15 for transmittal to the Commissioner of Social Services. The Commissioner, as agent of the State Board, shall review the estimate submitted by each county and notify the board of county commissioners by June 1 of the adequacy of the county's estimate and of the amount of county funds necessary to support an adequate public assistance budget in the next fiscal year. Upon receipt of such notice, the board of county commissioners shall levy taxes sufficient to provide for the payment of the county's part of such budget. If the board of commissioners disputes the budget recommended by the Commissioner, the State Board of Social Services shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 9, 21, 39, 51; 1943, c. 505, s. 8; 1969, c. 546, s. 1.)

§ **108-55. Determination of administrative expenses.**—The director of social services of each county shall annually compile and submit to the county board of social services an estimate of total funds required to finance the administrative expenses of the social service programs in the next fiscal year. This estimate shall be prepared before March 15 on forms furnished by the State Department of Social Services. The county board of social services shall review, modify and approve the estimate and transmit it to the board of county commissioners before April 1 for its review, modification and approval. The estimate shall then be forwarded to the Commissioner of Social Services on or before April 15. The Commissioner, as agent of the State Board, shall review the estimate submitted by the county and notify the board of commissioners by June 1 of the adequacy of its estimate and of the amount of county funds necessary to support the social service administrative budget in the subsequent fiscal year. Upon receipt of such notice, the board of commissioners shall levy taxes sufficient to provide for the payment of the county's part of the budget. If the board of commissioners disputes the budget recommended by the Commissioner, the State Board of Social Services shall make a final determination that shall be binding upon the county. (1937, c. 288, ss. 23, 53; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1; 1967, c. 898; 1969, c. 546, s. 1.)

§ **108-56. Counties to levy taxes.**—(a) Whenever the Commissioner assigns a portion of the nonfederal share of public assistance expenses to the counties under the rules and regulations of the State Board, the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses.

(b) The board of county commissioners may combine any or all of the separate special taxes for each program of public assistance and for the administrative expenses of such programs in place of levying separate special taxes for each item. This consolidated public assistance tax shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of county income and revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance. The appropriations and expenditures for each of the several programs and for administrative expenses shall be separately stated and accounted for. (1937, c. 288, ss. 9, 39; 1969, c. 546, s. 1.)

Editor's Note.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Amendment Effective July 1, 1973.—Session Laws 1971, c. 780, s. 35, effective July 1, 1973, will rewrite subsection (b) to read as follows:

(b) Appropriations and revenue estimates for each of the public assistance programs required by this Chapter and for administrative expenses shall be separately shown in the county budget ordinance and the accounting system. In the discretion of the board of county commissioners, the budget ordinance and accounting system may set up these programs (i) as separate lines within the general fund, (ii) within separate funds for each program, or (iii) within a single public assistance fund. Taxes levied for public assistance programs and administration shall be sufficient, when combined with other funds available for use for public assistance expenses from any other source of revenue (including borrowing in anticipation of collection of taxes), to meet the financial requirements of public assistance.

§ **108-57. Appropriations not to revert.** — County appropriations for public assistance expenses or administration shall not lapse or revert, and the unexpended balances may be considered in making further public assistance or administrative appropriations. At any time during the fiscal year, any county may transfer county funds from one public assistance program to another if such action appears to be both necessary and feasible, provided the county secures the approval of the Commissioner of Social Services. (1953, c. 891; 1967, c. 554; 1969, c. 546, s. 1.)

§ **108-58. Equalizing fund.** — The Commissioner of Social Services is authorized and directed to reserve from State appropriations for the programs of public assistance an amount that he finds to be necessary to equalize the burden of taxation in the counties of the State, and to equalize the benefits received by the recipients of public assistance. This amount shall be expended and disbursed solely for the use and benefit of persons eligible for assistance. The amount reserved, to be known as the equalizing fund, shall be distributed among the counties according to their needs under a formula approved by the State Board of Social Services so as to produce a fair and just distribution. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409; 1969, c. 546, s. 1.)

Part 5. Medical Assistance.

§ **108-59. State Fund created.** — To provide for an effective medical assistance program and its administration in North Carolina, the State Board of Social Services is authorized and empowered to establish from federal, State and county appropriations a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of such Fund in accordance with the provisions of this part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share required from the counties may not exceed the share required from the State. If a portion of the nonfederal share is required from the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this part, in an amount sufficient to cover each county's share of such assistance. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ **108-60. Payments from Fund.**—From the Fund established in G.S. 108-59, the State Board of Social Services may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person, when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments from the Fund shall be made only to hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other personnel authorized by the State Board of Social Services. (1965, c. 1173, s. 1; 1969, c. 546, s. 1; 1971, c. 435.)

Editor's Note.—The 1971 amendment inserted "and nursing homes" in the last sentence.

§ 108-61. Acceptance of federal grants.—All of the provisions of the federal Social Security Act providing grants to the states for medical assistance are accepted and adopted, and the provisions of this part shall be liberally construed in relation to such act so that the intent to comply with it shall be made effectual. Nothing in this part or the regulations made under its authority shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this part within the provisions of the federal Social Security Act. (1965, c. 1173, s. 1; 1969, c. 546, s. 1.)

§ 108-61.1. Advisory committee for medical assistance.—(a) There shall be established an advisory committee for medical assistance, appointed by the Governor.

(b) The purpose of the committee shall be to advise the State Board of Social Services concerning the purchase of health and medical services as named in this part or that may be approved by the Board pursuant to G.S. 108-24, subdivision (4).

(c) The director of each of the following departments of State government, or his designee, shall be members of the committee: State Commission for the Blind, State Board of Health, Department of Public Instruction, Department of Administration, Department of Mental Health. The terms of these members shall be at the pleasure of the Governor.

(d) One member shall be appointed from each health service provider association or society named in this article whose members are authorized to provide health services for the medical services program created under this part. Each association or society will submit nominees to the Governor.

(e) Five citizens at large, knowledgeable about the health problems of the poor, or about the purchase of health care, shall be appointed to the committee.

(f) Three additional members may be appointed by the Governor if deemed desirable.

(g) From among the provider and citizen members, one third shall be appointed for one-year terms, one third for two-year terms and one third for three-year terms. Subsequent appointments shall be for three-year terms. A chairman and vice-chairman shall be appointed by the Governor.

(h) The committee shall meet at least semiannually and at such other times as may be called by the chairman.

(i) Staff services shall be provided to the committee by the State Department of Social Services. Members who are citizens at large and members who are providers of service shall be paid travel expenses as provided members of State boards and commissions under G.S. 138-5, from funds appropriated to the State Board of Social Services. (1969, c. 1040, s. 1.)

Editor's Note. — Session Laws 1969, c. 1040, s. 3, makes the act effective July 1, 1969.

State Government Reorganization.—The advisory committee for medical assistance was transferred to the Department of Human Resources by § 143A-137, enacted by Session Laws 1971, c. 864.

Part 6. General Assistance.

§ **108-62. Eligibility.**—Assistance may be granted under this part to any person who is unable to earn a sufficient income and is without sufficient resources to provide a subsistence compatible with decency and health. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-63. Application procedure.**—(a) Applications under this part shall be made to the county director of social services who, with the approval of the county board of social services, and in conformity with the rules and regulations of the State Board of Social Services, shall determine whether assistance shall be granted and the amount of such assistance.

(b) The amount of assistance which any eligible person may receive shall be determined with regard to the resources and necessary expenditures of the applicant, in accordance with the appropriate rules and regulations of the State Board.

(c) Insofar as available funds permit, assistance under this part shall be sufficient, when added to all other income and resources of the applicant, to provide him a reasonable subsistence compatible with health and decency, in conformity with the principle of equitable treatment among counties set forth in the rules and regulations of the State Board. (1949, c. 1038, s. 2; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-64. State funds to counties.**—(a) A fund, to be known as the "State General Assistance Fund," shall be created from appropriations made by the General Assembly and from grants of the federal government (when such grants are made available to the State). This Fund shall be used exclusively for assistance to needy persons eligible under this part.

(b) Allotments shall be made annually by the Commissioner of Social Services, as prescribed by G.S. 108-52, to the counties participating in the program established by this part.

(c) The allotments provided by this section shall be used by the counties entitled to them solely as supplementary funds to increase the general assistance being granted. No allotment shall be used, either directly or indirectly, to replace county appropriations or expenditures. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-65. Participation permissive.** — The general assistance program established by this part shall be administered as required by the rules and regulations of the State Board of Social Services, except that no county shall be granted any allotment from the State General Assistance Fund nor be subject to the provisions of this part unless its consent be given in the manner prescribed by the rules and regulations of the State Board. In the event that federal general assistance grants be made available to the State on the condition that all counties participate in such program, however, all of the provisions of this part shall become mandatory upon every county. (1949, c. 1038, s. 2; 1969, c. 546, s. 1.)

Part 7. Foster Home Fund.

§ **108-66. State Foster Home Fund.**—(a) The General Assembly shall appropriate funds to the State Department of Social Services for the purpose of providing assistance to needy children who are placed in foster homes by county departments of social services in accordance with the rules and regulations of the State Board. Such appropriations shall be known and designated as the State Foster Home Fund and, together with county contributions for this purpose, shall be expended to provide for the costs of keeping needy children in foster homes.

(b) No needy child shall be eligible for the benefits provided by this section if he be eligible for foster home care benefits provided by part 2 of this article entitled

"Aid to Families with Dependent Children." (1937, c. 135, ss. 1, 2, 3; 1955, c. 1044, ss. 1, 2; 1957, c. 100, s. 1; 1969, c. 546, s. 1.)

"Foster Home" Includes Various Institutions Which Are Eligible for Assistance. —See opinion of Attorney General to Mr. Clifton M. Craig, Social Service, 41 N.C.A.G. 384 (1971).

ARTICLE 3.

Inspection and Licensing Authority.

Part 1. Licensing of Public Solicitation.

§ **108-67. Definitions.**—As used in this part, certain words and phrases shall be defined as follows:

(1) "Charitable organization" is any person, organization, corporation, institution, association, agency or copartnership which is or purports to be a charitable, benevolent, health, educational, religious, patriotic or other similar public cause or an organization to alleviate cruelty toward animals.

(2) "Solicitation" is any act of seeking or obtaining, whether by mail, through solicitors, or other means, any of the following benefits: a grant of money or property, including a promise to give any such grant; a gift of goods, wares, merchandise or other items of value; the sale or distribution, or offer for sale or distribution to the public of any item to raise money; the sale of memberships, periodicals, books or advertising space; and the promotion of any public bazaar, sale, entertainment, exhibition or other event to secure money, goods, or property.

(3) "Solicitor" is any person, organization, corporation, institution, association, agency or copartnership that agrees, for whatever reason, to solicit or collect contributions or other benefits for any charitable organization.

(4) "Verified financial report" is a report of an audit conducted in accordance with generally accepted auditing standards and containing the expression of an unqualified opinion by an independent certified public accountant. (1969, c. 546, s. 1.)

§ **108-68. Licenses required.**—No charitable organization, nor any other organization nor person on its behalf, intrastate or foreign, unless exempted by G.S. 108-73, shall solicit benefits from residents of North Carolina unless it has filed a request with the Commissioner of Social Services for a license and is so licensed as provided by this part. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ **108-69. Licensing procedure.**—(a) Every charitable organization required under this part to secure a license in order to solicit benefits or to authorize solicitations in its behalf shall file a written application with the Commissioner on a form furnished by him. The application shall require proof of the following subjects: the worthiness of the charitable organization's cause or causes; its chartered responsibility; the existence of an adequate, responsible and functioning governing board; its need for public solicitation, and the proposed uses of solicited funds. The applicant shall also file a report summarizing its accomplishments during the preceding fiscal period; a verified financial report for the preceding fiscal period; and a report of the proposed program and objectives, including a budget, for the fiscal period for which the application is filed.

(b) Newly created charitable organizations with no financial history may be granted a nonrenewable license for one year if, in the judgment of the Commissioner, all requirements for licensing except that of the verified financial report are satisfied.

(c) The State Board of Social Services may adopt standards for the regulation and licensing of certain charitable organizations whose solicitation goals and total contributions received are below specified limits to provide for simplified financal reporting as a prerequisite for licensing.

(d) In considering applications for licensing, the Commissioner shall seek the counsel of any State agency in any cause in which an agency may have an interest or responsibility.

(e) A license shall not be issued to any applicant that pays or agrees to pay an unreasonable or exorbitant amount of the funds collected, as determined by regulations of the State Board of Social Services, for the compensation of solicitors and for expenses incurred in promoting and conducting its fund raising activities and solicitation campaign.

(f) The Commissioner shall issue a license to solicit for a period not to exceed one year, subject to annual renewal, if he finds after full investigation and consideration of the completed application that the causes of the applicant are not harmful to the public interest and that the proposed solicitations are truly for the causes set forth in the application.

(g) The Commissioner may revoke any license before its expiration date if such action would be in the public interest. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ **108-70. Appeal procedure.**—An applicant who is refused a license or whose license has been revoked by the Commissioner shall be entitled to a hearing before the Commissioner if a written request for such hearing be made to the Commissioner within fifteen days after notice of refusal or revocation is delivered or mailed to the applicant or licensee. All hearings shall be open to the public. The final decision of the Commissioner on the matter appealed from shall be mailed to the interested parties within ten days after such hearing. (1939, c. 144, s. 1; 1947, c. 572; 1969, c. 546, s. 1.)

§ **108-71. Annual financial reports.**—(a) Every licensee under this part shall file a verified financial report with the State Department of Social Services within one hundred and twenty (120) days after the end of each fiscal year. Such verified financial report shall show the licensee's receipts and expenditures on an itemized basis so as to disclose the various purposes for which the licensee solicited and expended funds. Such report shall contain, but not be limited to, details on the costs of raising or securing contributions; the costs of administration, including the organization and operation of new member groups and affiliates within the State; the costs of research pursued by the licensee; and the portion of funds raised in the State and expended inside and outside the State.

(b) No license shall be renewed for any licensee that fails to comply with the provisions of this section. (1967, c. 607; 1969, c. 546, s. 1.)

§ **108-72. Authorization of individual solicitors.**—Every person who shall solicit or collect any contribution in money or other property or who shall sell any item for which the proceeds are reserved for and given to a licensee under this part shall have in his possession a written authorization, pledge card, receipt form, or other evidence of authority provided to him by the licensee, and he shall show such authorization upon request. (1939, c. 144, s. 2; 1947, c. 572; 1969, c. 546, s. 1.)

§ **108-73. Exemptions from licensing requirement.**—(a) The provisions of this part shall not apply to any solicitation or appeal made by the following organizations:

(1) Any civic, religious, educational, fraternal, or patriotic organization which confines it solicitation or appeal to its own membership and which does not grant membership to persons who make a contribution as a result of a solicitation or appeal;

(2) Any church that seeks funds for the construction, upkeep, or maintenance of the church building, clergy's residence or for the support of its clergy;

(3) Any college holding membership in the North Carolina College Conference and whose governing board makes the solicitation and receives the contributions;

(4) Any nonpublic high school which is accredited by the State Department of Public Instruction and which offers at least the minimum course of study prescribed by the State Board of Education;

(5) Any locally indigenous charitable organization which confines its solicitations and operations to the county in which its executive office is located and its governing board resides.

(b) Any charitable organization or other organization that desires to solicit or does solicit the public and claims exemption from the licensing requirements of this part shall file a statement with the Commissioner on forms prescribed by him which shall show proof of its exempted status under this section. The exemption shall be authorized by the Commissioner before such organization may begin or continue to solicit from the public. The claimed exemption shall be subject to annual renewal on forms prescribed by the Commissioner. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990; 1969, c. 546, s. 1.)

§ **108-74. Solicitation for individual livelihood.**—(a) It shall be unlawful for any person to engage in the business of soliciting contributions for his own or another person's livelihood, either upon the streets and highways of this State, through door to door solicitation, or through the mails unless he obtains a license for this purpose from the Commissioner of Social Services.

(b) Any person who desires to engage in the business of soliciting contributions under this section shall file a written application for a license on a form furnished by the Commissioner which shall contain his name, his addresses for the past five years, his purpose in seeking to solicit contributions, his reasons for not pursuing another means of livelihood or for not seeking public assistance grants, and such other information as the Commissioner may require. Before issuing a license, the Commissioner shall seek counsel from other interested State agencies. Persons soliciting contributions while carrying merchandise for sale shall not be exempted from the provisions of this section.

(c) A licensee under this section shall carry a copy of his license with him while soliciting contributions and shall show it on request. (1947, c. 572; 1969, c. 546, s. 1.)

§ **108-75. Penalties for violations.** — (a) Any solicitor or charitable organization that violates any of the provisions of this part shall be guilty of a misdemeanor. Upon conviction, the court shall commit an individual violator to prison for a term not to exceed six months; corporate violators shall be fined not more than five hundred dollars ($500).

(b) Any licensee under this part that, after conducting a solicitation campaign and obtaining funds from such solicitation, shall wilfully convert or misapply any of such funds in a manner contrary to the purposes set forth in its application for licensing shall be guilty of a felony and be punished in the discretion of the court. (1939, c. 144, s. 3; 1947, c. 572; 1969, c. 546, s. 1.)

Part 2. Licensing of Private Institutions.

§ **108-76. Licensing of maternity homes.**—(a) The State Department of Social Services shall inspect and license all maternity homes established in the State under such rules and regulations as the State Board of Social Services may adopt.

(b) Facilities subject to the provisions of this section shall include:

(1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and

(2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

§ **108-77. Licensing of homes for the aged and infirm.**—(a) The State Department of Social Services shall inspect and license, under the rules and regulations adopted by the State Board of Social Services, all boarding homes, rest homes, and convalescent homes for persons who are aged or are mentally or physically infirm, except those exempted in subsection (c) below. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked for cause earlier by the Commissioner.

(b) Any individual or corporation that shall operate a facility subject to license under this section without such license shall be guilty of a misdemeanor.

(c) Facilities which are exempt from the provisions of this section are as follows:

(1) Those which care for one person only;

(2) Those which care for two or more persons, all of whom are related or connected by blood or marriage to the operator of the facility;

(3) Those which make no charges for care, either directly or indirectly;

(4) Those which care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.

(d) This section shall not apply to any institution which is established, maintained or operated by any unit of government; any commercial inn or hotel; or any facility licensed by the State Board of Health under the provisions of G.S. 130-9 (e), entitled "Nursing Homes." (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

§ **108-78. Licensing of private child-caring institutions.** — (a) The State Department of Social Services shall inspect and license private child-caring institutions in the State under rules and regulations adopted by the State Board of Social Services, except those child-caring institutions which are exempt under (c) herein.

(b) Licenses granted to private child-caring institutions under this section shall be valid for one year after the date of issuance and may be revoked sooner if the Commissioner finds that the public good or the welfare of the children within any institution is not being properly served.

(c) This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars ($60,000.00) or more and which is owned or operated by a religious denomination or fraternal order. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1.)

Part 3. Local Confinement Facilities.

§ **108-79. Inspection.**—The State Department of Social Services shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50 (4) to determine compliance with the minimum standards for local confinement facilities adopted by the State Board of Social Services. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-80. Approval of new facilities.**—The State Department of Social Services shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1.)

§ **108-81. Failure to provide information.**—If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the State Department of Social Services any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1.)

§§ **108-82 to 108-86**: Repealed by Session Laws 1969, c. 546, s. 1, effective July 1, 1969.

Revision of Chapter.—See same catchline in note at the beginning of this chapter.

Chapter 109.

Bonds.

ARTICLE 3.

Mortgage in Lieu of Bond.

§ 109-29. Mortgage in lieu of bond to prosecute or defend in civil case.

Editor's Note.—For note on the North Carolina public assistance lien law and current constitutional doctrine, see 49 N.C.L. Rev. 519 (1971).

ARTICLE 5.

Actions on Bonds.

§ 109-34. Liability and right of action on official bonds.

Cited in State ex rel. West v. Ingle, 269 N.C. 447, 152 S.E.2d 476 (1967).

Chapter 110.

Child Welfare.

Article 1.

Child Labor Regulations.

Sec.
110-16. [Repealed.]

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110-20.1. Exhibition of certain children prohibited.

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110-21.1. [Repealed.]
110-22. Probation conditions; revocation.
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110-23. Duties and powers of juvenile probation officers.
110-23.1. Juvenile probation officers; nongovernmental employees.
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110-25.1. [Transferred.]
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110-68. Membership of Commission.
110-69. Terms and eligibility.
110-70. Organization of the Commission.
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110-73 to 110-84. [Reserved.]

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Day-Care Facilities.

110-85. Legislative intent and purpose.
110-86. Definitions.
110-87. Child Day-Care Licensing Board.
110-88. Powers and duties of the Board.
110-89. Director.
110-90. Powers and duties of Director.
110-91. Mandatory standards for a license.
110-92. Duties of State and local agencies.
110-93. Licensing procedure.
110-94. Administrative appeal.
110-95. Appeal hearing.
110-96. Judicial review of administrative appeals.
110-97. Judicial review hearing.
110-98. Mandatory license.
110-99. Display of license.
110-100. Licenses are property of the State.
110-101. Registration.
110-102. Information for parents.
110-103. Penalty.
110-104 to 110-114. [Reserved.]

Article 8.

Child Abuse and Neglect.

110-115. Short title.
110-116. Legislative intent and purpose.
110-117. Definitions.
110-118. Reports of child abuse or neglect.
110-119. Duty of director of social services.
110-120. Immunity of persons reporting.
110-121. Waiver of privileges.
110-122. Central registry.

ARTICLE 1.

Child Labor Regulations.

§ 110-2. Hours of labor.—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after seven o'clock in the evening of any day, or after nine o'clock on days when schools are not in session. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of Labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1; 1967, cc. 173, 764; 1969, c. 962.)

Editor's Note.—The first 1967 amendment deleted the former first proviso, relating to nightwork by girls between 16 and 18 years of age.

The second 1967 amendment deleted the former last proviso to the second sentence, relating to employment of girls between 17 and 18 years of age in motion picture theaters.

The 1969 amendment substituted "seven o'clock" for "six o'clock" and added "or after nine o'clock on days when schools are not in session" in the first sentence.

§ 110-6. Hazardous occupations prohibited for minors under sixteen.

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 110-7. Hazardous occupations prohibited for minors under eighteen.

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

Stated in Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

§ 110-12. Method of issuing employment certificates. — The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(2) Evidence of age showing that minor is of the age required by this Article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

a. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

b. A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

c. Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport or transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

d. Repealed by Session Laws 1971, c. 370.

(3): Repealed by Session Laws 1971, c. 368.

(1971, cc. 368, 370.)

Editor's Note.—The first 1971 amendment repealed former subdivision (3), requiring a doctor's certificate of physical fitness for an employed minor.

The second 1971 amendment repealed former paragraph d of subdivision (2), allowing, in certain circumstances, a doctor to certify that a minor is of sufficient age to be employed.

Only the opening paragraph of the section and the subdivisions changed by the amendments are set out.

§ 110-16: Repealed by Session Laws 1971, c. 1231, s. 2.

§ 110-19. Inspection and prosecutions.—It shall be the duty of the State Department of Labor and of the inspectors and agents of said State Department of Labor to enforce the provisions of this Article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said State Department of Labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the Article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this Article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed. (1937, c. 317, s. 19; 1971, c. 1231, s. 2.)

Editor's Note. — The 1971 amendment deleted the former second paragraph.

ARTICLE 1A.

Exhibition of Children.

§ 110-20.1. Exhibition of certain children prohibited.—(a) Except to the extent otherwise provided in subsection (d) of this section, it is unlawful to exhibit publicly for any purpose, or to exhibit privately for the purpose of entertainment, or solely or primarily for the satisfaction of the curiosity of any observer, any child under the age of 18 years who is mentally ill or mentally retarded or who presents the appearance of having any deformity or unnatural physical formation or development, whether or not the exhibiting of the child is in return for a monetary or other consideration.

(b) It is unlawful to employ, use, have custody of, or in any way be associated with any child described in subsection (a) for the purpose of an exhibition forbidden therein, or for one who has the care, custody or control of the child as a parent, relative, guardian, employer or otherwise, to neglect or refuse to restrain the child from participating in the exhibition.

(c) It is unlawful to procure or arrange for, or participate in procuring or arranging for, anything made unlawful by subsections (a) and (b).

(d) This section does not apply to the transmission of an image by television by a duly licensed television station, or to any exhibition by a federal, State, county or municipal government, or political subdivision or agency thereof, or to any exhibition by any corporation, unincorporated association, or other organization organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) Any violation of this article shall be a misdemeanor which, upon conviction, shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00) or imprisonment for not more than 30 days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice to the violator, from any county welfare director, to cease and desist from any violation of this section shall constitute a separate and distinct offense. Any act or omission forbidden by this article shall, with respect to each child described therein constitute a separate and distinct offense. (1969, c. 457, s. 1.)

Editor's Note. — Session Laws 1969, c. 457, s. 3, makes the act effective July 1, 1969.

ARTICLE 2.

Juvenile Services.

§ 110-21. Probation.—The county director of social services shall be the chief juvenile probation officer in each county, except that the chief counselor shall be the chief juvenile probation officer in counties where family counselor services are established as provided in G.S. 7A-134. The chief juvenile probation officer shall supervise the work of any persons who provide juvenile probation services.

If there are no family counselor services available in a district, the judges exercising juvenile jurisdiction and the directors of the county social services departments in the district may agree in writing that all persons providing juvenile probation services in the district shall be regular employees of the county social services departments in the district who are administratively responsible to the county director of social services as chief juvenile probation officer in each county. Such written agreement shall provide for uniform practices and procedures in juvenile cases in the district. Upon election or appointment of a judge who was not a party to the agreement, the parties may enter a new agreement as herein provided. (1919, c. 97, s. 11; C. S., s. 5049; 1947, c. 94; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 633; 1969, c. 911, s. 1.)

Revision of Article.—Session Laws 1969, c. 911, s. 1, rewrote this article, which formerly related to juvenile courts and comprised §§ 110-21 through 110-44, to appear as present §§ 110-21 through 110-24. Historical citations to sections of the former article have been added to similar sections of the article as revised. Provisions as to juvenile jurisdiction of the district court, and procedures applicable to children therein, are now found in §§ 7A-277 through 7A-289.

Session Laws 1969, c. 911, s. 11, provides: "This act shall be effective January 1, 1970, provided that in those districts where the district court is not yet established, the courts exercising juvenile jurisdiction on the effective date shall continue to exercise juvenile jurisdiction until the district court is established."

§ 110-21.1: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-22. Probation conditions; revocation.—When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;
(2) That the child attend school regularly;
(3) That the child not associate with specified persons or be in specified places;
(4) That the child report to the probation officer as often as required by the probation officer;
(5) That the child make specified financial restitution or pay a fine;
(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by Article 23 of Chapter 7A. If a child violates the conditions of his probation, such child, after notice, may be required to appear before the court, and the court may make any disposition of the matter authorized by G.S. 7A-286. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child. (1919, c. 97, s. 12; C. S., s. 5050; 1969, c. 911, s. 1; 1971, c. 1180, s. 6.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, in the third sentence of the second paragraph, inserted "after notice" before "may be required," deleted "after notice" following "before the court," and substituted "authorized by G.S. 7A-286" for "that it might have made when the child was placed on probation."

§ **110-22.1:** Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ **110-23. Duties and powers of juvenile probation officers.**—All juvenile probation officers or family counselors providing services to judges hearing juvenile cases shall have the following powers and duties, as the court may require:

(1) To secure or arrange for such information concerning a case as the court may require before, during or after the hearing;
(2) To prepare written reports for the use of the court;
(3) To appear and testify at court hearings;
(4) To assume temporary custody of a child when so directed by court order;
(5) To furnish each child on probation and his parents with a written statement of his conditions of probation, and to consult with the parents, guardian or custodian so that they may help the child comply with his probation;
(6) To keep informed concerning the conduct and progress of any child on probation or under court supervision through home visits or conferences with the parents, guardian or custodian, and in other ways;
(7) To see that the conditions of probation are complied with by the child, or to bring any child who violates his probation to the attention of the court;
(8) To make periodic reports to the court concerning the adjustment of any child on probation or under court supervision;
(9) To keep such records of his work as the court may require;
(10) To account for all funds collected from children;
(11) To have all the powers of a peace officer in the district;
(12) To provide supervision for a child transferred to his supervision from another court or another state, and to provide supervision for any child released from an institution operated by the North Carolina Board of Juvenile Correction when requested by such Board to do so;

(13) To have such other duties as the judge may direct. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1; 1969, c. 911, s. 1.)

§ 110-23.1. Juvenile probation officers; nongovernmental employees.—Whenever funds are made available for the purposes of this section, the chief district court judge of any district where family counselor services are not available may, in accordance with rules of the administrative offices of the courts, designate persons other than government employees to act as juvenile probation officers and chief juvenile probation officers, and such persons so designated shall have the same powers, duties, and responsibilities as juvenile probation officers and chief juvenile probation officers otherwise provided for by law. (1971, c. 1134.)

§ 110-24. Detention homes.—It shall be unlawful for any child coming within the provisions of article 23 of chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except as herein provided.

Children who are alleged or adjudicated to be delinquent or undisciplined and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a juvenile detention home, which shall be separate from any jail, lockup, prison or other adult penal institution. A juvenile detention home shall be located in a building designed to provide secure custody and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A detention home shall be operated as a family home according to the standards applicable to juvenile detention facilities adopted by the State Board of Social Services under G.S. 153-52 and under the supervision of the judges exercising juvenile jurisdiction in the district. Personnel employed in a detention home may be appointed by the unit of government which operates the program, except that such appointments shall be approved by the State Department of Social Services. The program of a detention home shall be designed as far as possible to provide wholesome activities in the best interest of the children placed therein.

If there is no detention home available, the judge may arrange for the care of a child requiring secure custody in a private home, a foster home or in any other available child-care facility. When the judge finds there is a pressing need that a child be held in secure custody and there is no juvenile detention home available to the judge, the judge may order the temporary detention of such child in any section of a local jail which is so arranged that the child cannot converse with, see or be seen by the adult population of the jail while being detained, provided that the jailer or other personnel responsible for administration of the jail shall provide close supervision of any child so detained for the protection of the child. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1; 1967, c. 1207; 1969, c. 911, s. 1.)

Opinions of Attorney General. — Honorable Gilbert H. Burnett, District Court Judge, Fifth Judicial District, 7/23/69.

§ 110-25: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-25.1: Transferred to § 130-58.1 by Session Laws 1969, c. 911, s. 3.

§§ 110-26 to 110-38: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

§ 110-39: Transferred to § 14-316.1 by Session Laws 1969, c. 911, s. 4.

§§ 110-40 to 110-44: Repealed by Session Laws 1969, c. 911, s. 1.

Revision of Article.—See same catchline in note under § 110-21.

ARTICLE 2A.

Parental Control of Children.

§ **110-44.1. Child under eighteen subject to parents' control.**—Notwithstanding any other provision of law, any child under 18 years of age, except as provided in §§ 110-44.2 and 110-44.3, shall be subject to the supervision and control of his parents. (1969, c. 1080, s. 1.)

§ **110-44.2. Exceptions.**—This article shall not apply to any child under the age of 18 who is married or who is serving in the armed forces of the United States, or who has been emancipated. (1969, c. 1080, s. 2.)

§ **110-44.3. No criminal liability created.**—This article shall not be interpreted to place any criminal liability on a parent for any act of his child 16 years of age or older. (1969, c. 1080, s. 3.)

§ **110-44.4. Enforcement.**—The provisions of this article may be enforced by the parent, guardian, or person standing in loco parentis to the child by filing a civil action in the district court of the county where the child can be found. Upon the institution of such action by a verified complaint, alleging that the defendant child has left home or has left the place where he has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the child personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the child and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the child to appear the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure or conveyance for the purpose of searching for said child and serving said order and for the purpose of taking custody of the person of said child in order to bring said child before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the child reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the child, or anyone acting in his behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of said child, any district court judge holding court in the county or judicial district where said action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Any aggrieved party may within the time allowed for appeal of civil actions generally appeal to the superior court where trial shall be had without a jury. Appeals from the superior court to the Court of Appeals shall be allowed as in civil actions generally. The district judge issuing the original order or the district judge hearing the matter after answer has been filed, shall also have authority to order that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant child to remain on said person's premises or in said person's home. Failure of any defendant to comply with the terms of said order or judgment shall be punishable as for contempt. (1969, c. 1080, s. 4.)

ARTICLE 3.

Control over Child-Caring Facilities.

§ **110-49. Permits and licenses must be had by institutions caring for children.**—No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of giving full-time care to children or for the purpose of placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Social Services. The said Board shall issue such permit recommending said business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in G.S. 108-78 (c) shall annually procure a license from the State Board of Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1; 1969, cc. 908, 1081.)

Editor's Note.—The first 1969 amendment, effective July 1, 1969, rewrote the first sentence of the first paragraph and substituted "G.S. 108-73 (c)" for "§ 108-3, subdivision (5)" in the second paragraph.

The second 1969 amendment, also effective July 1, 1969, corrected a typographical error in the first amendment by substituting "G.S. 108-78" for "G.S. 108-73" in the second paragraph.

By virtue of Session Laws 1969, c. 982, "State Board of Public Welfare" shall be construed to mean "State Board of Social Services."

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ **110-57. Application of Article.**—None of the provisions of this Article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is 18 years of age or older. (1947, c. 609, s. 5; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one."

ARTICLE 4A.

Interstate Compact on the Placement of Children.

§ **110-57.1. Adoption of compact.**—The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this compact.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) "Appropriate public authorities" as used in Article III shall, with reference to this State, mean the State Department of Social Services and said agency shall receive and act with reference to notices required by Article III.

(f) "Appropriate authority in the receiving state" as used in paragraph (a) of Article V shall, with reference to this State, mean the Commissioner of Social Services of the State Department of Social Services.

(g) "Executive head" as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.
(2) The identity, and address or addresses of the parents or legal guardian.
(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations.

This compact shall not apply to: (a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1971, c. 453, s. 1.)

Editor's Note.—Section 3, c. 453, Session Laws 1971, makes this Article effective July 1, 1971.

§ **110-57.2. Financial responsibility under compact.** — Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked. (1971, c. 453, s. 2.)

§ **110-57.3. Agreements under compact.**—The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Commissioner of Social Services in the case of the State and of the county director of social services in the case of a county or other subdivision of the State. (1971, c. 453, s. 2.)

§ 110-57.4. Visitation, inspection or supervision.—Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.5. Compact to govern between party states.—The provisions of Article 4 of Chapter 110 of the General Statutes shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ 110-57.6. Placement of delinquents.—Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. (1971, c. 453, s. 2.)

§ 110-57.7. Compact administrator. — The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII. (1971, c. 453, s. 2.)

ARTICLE 5.

Interstate Compact on Juveniles.

§ 110-58. Execution of compact.

State Government Reorganization.—The administration of the compact was transferred to the Department of Human Resources by § 143A-156, enacted by Session Laws 1971, c. 864.

Opinions of Attorney General. — Mrs. Margaret H. Paris, Supervisor, Family & Childrens' Services Section, Department of Social Services, 9/26/69.

§ 110-64. Proceedings for return of runaways under Article IV of compact; "juvenile" construed.—The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of Article IV of the compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any male 16 years of age or under and any female 17 years of age or under. (1965, c. 925, s. 2; 1971, c. 1231, s. 2.)

Editor's Note. — The 1971 amendment substituted "17" for "18" in the last sentence.

ARTICLE 6.

Governor's Advocacy Commission on Children and Youth.

§ **110-65. Short title.**—This Article may be cited as the Governor's Advocacy Commission on Children and Youth Act. (1971, c. 935, s. 1.)

Editor's Note. — Session Laws 1971, c. 935, s. 2, makes the act effective on July 1, 1971.

§ **110-66. Legislative purpose and intent.**—The General Assembly finds there is need for better planning and more effective coordination among public and private agencies serving children and youth in North Carolina in order to improve inadequate programs, to avoid duplication of effort and waste of resources, to provide for unmet needs, and to improve delivery of services. By this Article creating a unit of State government to be an advocate for the broad needs and interests of children, the General Assembly intends to provide an answer to these problems so that public and private agencies may be more responsive to the needs of children and youth in this State. (1971, c. 935, s. 1.)

§ **110-67. Advocacy Commission established.** — (a) The Governor's Advocacy Commission on Children and Youth (hereinafter called the "Commission") is hereby established in the North Carolina Department of Administration to serve as an advocate of the interests of the children and youth within the State and local governments and with private agencies serving children and youth.

(b) The Commission shall be advisory to all agencies of State and Local government that provide services to children and youth or their families.

(c) The Commission shall not operate any programs providing direct services to children or youth or their families, since the provision of services is incompatible with its primary role as child advocate. (1971, c. 935, s. 1.)

§ **110-68. Membership of Commission.**—The Commission shall consist of the following 20 members: Two members of the Senate, appointed by the President of the Senate; two members of the House of Representatives, appointed by the Speaker of the House of Representatives; the State Health Director; the Commissioner of Social Services; the Commissioner of Mental Health; the State Superintendent of Public Instruction; the Commissioner of Juvenile Correction; seven other adult citizens appointed by the Governor; four youth members to be appointed by the Governor, two of whom shall be male, two of whom shall be female.

Any ex officio member may designate another person to represent him on the Commission, and that designee shall have all the powers of other Commission members. (1971, c. 935, s. 1.)

§ **110-69. Terms and eligibility.**—(a) The members of the General Assembly appointed to the Commission shall serve a term of two years. The seven adult citizen members of the Commission shall serve a term of four years, except that of the initial appointments, two shall be for a term of one year, two shall be for a term of two years; two shall be for a term of three years, and one shall be for a term of four years, in order to provide for staggered terms. In selecting the seven adult citizen members of the Commission, the Governor shall include persons who have an interest in and knowledge of children and youth, persons who work with children, and representatives of organizations concerned with problems of children and youth. In selecting the youth members, the Governor shall appoint two who are between the ages of 16 and 21 years of age and two who are less than 16 years of age at the time of their appointments. The four youth members shall serve terms of two years, except that two of the initial appointments shall be for terms of one year and two shall be for terms of two years, in order to provide staggered terms.

(b) Vacancies.—Any vacancy occurring in any appointive position prior to the regular expiration of the term shall be filled by appointment of the Governor or the presiding officer authorized to make the initial appointment for the remainder of the unexpired term. (1971, c. 935, s. 1.)

§ 110-70. Organization of the Commission.—(a) The Commission shall annually elect its own chairman, who shall be one of the members appointed from the General Assembly or by the Governor. No member of the Commission shall serve as chairman for more than four consecutive terms of one year. The Commission may elect such other officers from its membership as it deems necessary. The members of the Commission who are not officers or employees of the State shall receive for their services the per diem and allowances prescribed in G.S. 138-5.

(b) The Commission shall meet quarterly or upon call of the chairman. Ten members of the Commission shall constitute a quorum for the purpose of conducting its business. (1971, c. 935, s. 1.)

§ 110-71. Powers and duties of Commission.—The Commission shall have the following powers and duties:

(1) It shall appoint the administrator of the Commission with the approval of the Governor. The administrator shall be a qualified professional person with substantial knowledge of and experience in State government and related to the problems of children and youth.

(2) It shall act as an advocate for children and youth within State and local governments, and with private agencies serving children and youth, and it shall provide assistance in the development and coordination of child advocacy systems at the regional and local levels within the State.

(3) It shall conduct a continuing review of existing programs of State government for children and youth and their families by gathering data, studying existing services, evaluating the delivery of services, and in other ways that it deems appropriate.

(4) After appropriate review and study, it shall identify needs of children and youth and their families that are not being met by existing programs or that are being met inadequately, and when such gaps or inadequacies in services are identified, it shall recommend such new programs or improvements in existing services as it finds are needed, planning cooperatively with the appropriate State, local, or private agencies.

(5) It shall work with State and local agencies, both public and private, to help them to coordinate existing services more effectively, to engage in joint endeavors, to avoid duplication of services, and in other ways to make more effective use of available resources.

(6) It shall review any new programs affecting children and youth that are proposed by any State agency in order to make to that agency recommendations intended to avoid duplication of services, to promote better planning, to indicate ways in which the proposed program could be improved, or otherwise to make more effective use of available resources.

(7) It shall make reports and recommendations to the Governor and the General Assembly from time to time when it accumulates data which could aid in State planning or whenever the Commission finds that it would be helpful to make a report.

(8) It shall provide information to State and local agencies serving children and youth and their families, both public and private, as it finds to be appropriate, and provide information to the public concerning the activities of the Commission and its findings. (1971, c. 935, s. 1.)

§ 110-72. Powers and duties of the administrator.—The administrator of the Commission shall have the following powers and duties:

(1) He shall administer and implement the recommendations and findings

of the Commission, working cooperatively with the appropriate agencies, both public and private.

(2) He shall conduct such studies as are directed by the Commission with respect to the needs of children and youth, the programs and services of State and local agencies, both public and private, and he shall furnish such information, data, or reports as may be needed for the Commission to be an effective child advocate.

(3) He may appoint such subordinate personnel as may be approved by the Director of Administration.

(4) He shall encourage the development of child advocacy systems on the regional and local levels in the State by working cooperatively with local leadership within the State. (1971, c. 935, s. 1.)

§§ **110-73 to 110-84:** Reserved for future codification purposes.

ARTICLE 7.

Day-Care Facilities.

§ **110-85. Legislative intent and purpose.**—The General Assembly hereby declares its intent with respect to day care of children:

(1) The State should protect the growing number of children who are placed in day-care facilities or in child-care arrangements when these children are under the supervision and in the care of persons other than their parents, grandparents, guardians or full-time custodians during the day.

(2) This protection should assure that such children are cared for by persons of good moral character, that their physical safety and moral environment are protected, and that the day-care resources conform to minimum standards relating to the health and safety of the children receiving day care.

(3) This protection requires the following elements for a comprehensive approach: mandatory licensing of day-care facilities under minimum standards; promotion of higher levels of day care than required for a license through the development of higher standards which operators may comply with on a voluntary basis; registration of day-care plans which are too small to be regulated through licensing; and a program of education to help operators improve their programs and to develop public understanding of day-care needs and problems. (1971, c. 803, s. 1.)

Cross Reference.—As to privilege license tax on day-care facilities, see § 105-60.

Editor's Note. — Session Laws 1971, c. 803, s. 3, makes the act effective January 1, 1972.

§ **110-86. Definitions.**—Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) "Board" means the Child Day-Care Licensing Board created under this Article.

(2) "Day care" includes any child-care arrangement under which a child less than 13 years of age receives care away from his own home by persons other than his parents, grandparents, guardians or full-time custodians on a regular basis for more than four hours per day where a payment, fee or grant is made for care.

(3) "Day-care facility" includes any day-care center or child-care arrangement that provides day care for more than five children and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit, except that the following are not included: public schools; nonpublic

schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provides a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods.

(4) "Day-care plan" includes any day-care program or child-care arrangement where any person provides day care for more than one child and less than six children and receives a payment, fee or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

(5) "Director" means the Director of the Child Day-Care Licensing Board.

(6) "License" means a license issued by the Board to any day-care facility which meets the statutory standards established under this Article.

(7) "Operator" includes the owner, director or other person having primary responsibility for operation of a day-care facility subject to licensing. (1971, c. 803, s. 1.)

§ **110-87. Child Day-Care Licensing Board.**—(a) There is hereby created the Child Day-Care Licensing Board which shall coordinate all local and State agencies in inspecting, licensing and providing services to day-care facilities as provided by this Article. The Board shall consist of 15 members, five of whom shall be State officials and 10 of whom shall be citizen-members as hereinafter provided.

(b) The five State officials who shall serve on the Board are as follows, except that any of the officials may designate a representative from his department to serve on the Board with full status as a Board member: Commissioner of Insurance, Commissioner of Social Services, State Health Director, State Superintendent of Public Instruction and the Commissioner of Mental Health.

(c) The 10 citizen-members who serve on the Board shall be appointed by the Governor (except that none shall be employees of the five designated State officials who are Board members) and at least five of said appointees shall be operators of day-care facilities subject to licensing who are actively engaged in the operation for profit. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, three shall be from facilities licensed for no more than 70 children and one operator shall be from a facility licensed for more than 70 children. Three appointees shall be citizens not employed by day-care facilities and who have no direct or indirect pecuniary interest in such but two of whom shall be parents of pre-school children at the time of their appointment. Two appointees shall be operators of non-profit day-care facilities. These appointments shall be for terms of six years, with at least three appointees rotating off the Board each two years, except that a Board member may serve more than one term if so appointed by the Governor. In order to provide for rotation, the Governor shall designate three of the initial appointees to serve for two years, three to serve for four years, and four to serve full terms of six years. In case of vacancy, the Governor shall appoint a citizen-member to serve the remainder of the unexpired term. If one of the five appointees who are required to be operators for profit subject to licensing ceases to engage in operating a day-care facility for profit, the office of such Board member shall become vacant and the Governor shall appoint a qualified operator for profit to serve the remainder of such term.

(d) The Board shall elect its own chairman who shall have been appointed to the Board by the Governor and who shall serve at the pleasure of the Board, except that in no case shall a member of the Board serve as chairman for more than six years. (1971, c. 803, s. 1.)

§ **110-88. Powers and duties of the Board.**—The Board shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any

day-care facility which meets the health and safety standards established under this Article.

(2) To approve the issuance of licenses for day-care facilities based upon inspections by and written reports from existing agencies of State and local government where available, or based upon inspections by and reports from personnel employed by the Board where such services are not otherwise available.

(3) To develop a system or plan for registration of day-care plans in such form and place as shall be determined by the Board so that day-care plans which are not subject to licensing may be identified, so that there can be an accurate census of the number of children placed in day-care resources, and so that providers of day care who do not receive the educational and consultation services related to licensing may receive educational materials or consultation through the Board.

(4) To employ the Director of the Board, who shall be the chief administrator of the programs related to day care authorized by this Article and who shall implement the policies and procedures developed by the Board.

(5) To make rules and regulations and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules and regulations for the issuance of a provisional license to a day-care facility which does not conform in every respect with the standards relating to health and safety established in this Article provided that the Director finds, and the Board concurs in the finding that the operator is making a reasonable effort to conform to such standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Board shall be empowered to issue two grades of licenses: an "A" license for compliance with the provisions of the Article, and an "AA" license for those licensees meeting the voluntary higher standards promulgated by the Board.

(8) To furnish such forms as may be required for implementation of this Article under the procedures developed by the Board.

(9) To serve as an administrative-appeal body to determine all issues related to the issuance, renewal and revocation of licenses.

(10) To receive travel and per diem expenses as authorized for members of State boards under G.S. 138-5. (1971, c. 803, s. 1.)

§ **110-89. Director.**—The Director shall be a professional person with leadership and executive abilities who is knowledgeable about day care of children. The Director shall be responsible to the Board and shall serve at its pleasure. (1971, c. 803, s. 1.)

§ **110-90. Powers and duties of Director.**—The Director shall have the following powers and duties under the policies, rules and regulations of the Board:

(1) To administer the licensing program for day-care facilities and the registration system for day-care plans.

(2) To obtain and coordinate the necessary services from other State departments and units of local government which are necessary to implement the provisions of this Article.

(3) To employ such administrative personnel and staff as may be necessary

to implement this Article where required services, inspections or reports are not available from existing State agencies and units of local government.

(4) To issue a license effective for one year to any day-care facility which meets the standards established by this Article.

(5) To revoke after hearing the license of any day-care facility which ceases to meet the standards established by this Article.

(6) To prosecute or defend on behalf of the State, through the office of the Attorney General, any legal actions arising out of the administration or enforcement of this Article.

(7) To promote and coordinate educational programs and materials for operators of day-care facilities and day-care plans which are designed to improve the quality of day care available in the State, using the resources of other State and local agencies and educational institutions where appropriate.

(8) To issue a rated license when any operator of a day-care facility required to be licensed hereunder has satisfied the Board that it has met the voluntary standards developed and adopted by the Board. (1971, c. 803, s. 1.)

§ **110-91. Mandatory standards for a license.**—The following standards relating to the health and safety of children shall be complied with by all day-care facilities, except as otherwise provided in this Article. These standards shall be the only required standards for issuance of a license by the Director under policies and procedures of the Board.

(1) Medical Care and Sanitation.—Each day-care facility, and all personnel, shall meet the minimum health and sanitation standards developed by the State Board of Health subject to adoption by the Board not inconsistent with the provisions of this Article. The health and sanitation standards developed by the State Board of Health shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; health of staff members; and such other items and facilities as are necessary in the interest of the public health. Each year, or more often if required by the Board in a particular case, each day-care facility shall submit evidence satisfactory to the Board that it conforms to these health and sanitation standards.

Each child shall have a medical examination by a licensed physician prior to being admitted or within two weeks following admission to a day-care facility; a record of such examination shall be on file in the records of the facility, provided, however, that no medical certificate shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a medical examination on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in such manner as to meet the requirements of Articles 9 and 9A of Chapter 130 of the General Statutes.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific instructions from a physician or the child's parent, guardian or full-time custodian. Medical information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility in the records of the facility in accordance with a form approved by the Board for this purpose.

There shall be a separate bed, cot or mat for each child to use during rest periods, equipped with individual linen, except for school children who are cared for only during after-school hours; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be folded so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.

(2) Health-related Activities.—Each child in a day-care facility shall receive a lunch which is nutritionally adequate for good health. In addition, each child shall receive refreshments or a snack in the morning and the afternoon.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location.—Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Board.

(4) Building.—Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Board specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention.—All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Board.

(6) Space Requirements.—There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of air space per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules and regulations to be adopted by the Board which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection.

(7) Staff-Child Ratio.—In determining the staff-child ratio, children of the supervisor or other children under 13 years of age shall be included. The Board shall adopt rules and regulations regarding child-staff ratio, provided, however, that such rules and regulations shall in no event

require a ratio of staff members to children more stringent than the following:

a. For day-care facilities caring for less than 30 children, the ratios shall be as follows:

  1. In facilities licensed for six to 10 children, inclusive, one full-time supervising adult with another person between the ages of 16 and 70 years, inclusive, available for emergencies in relief.
  2. In facilities licensed for 11 to 20 children, inclusive, there must be one full-time supervising adult and one full-time staff member, one of whom may have responsibility for food preparation.
  3. In facilities licensed for 21 to 29 children, inclusive, there must be one full-time supervising adult and two full-time staff members, one of whom may have responsibility for food preparation.

b. For facilities caring for 30 or more children, the ratio shall be as follows:

Ages of Children	*No. of Children*	*Staff Members*
0 to 2 years	8	1
2 to 3 years	12	1
3 to 4 years	15	1
4 to 5 years	20	1
5 or more years	25	1

  1. Children under two years of age in any facility must be kept separate from older children, and with a full-time adult always in attendance.
  2. Staff members required to be responsible for the care of children shall not have responsibility for food preparation.

c. To provide for absenteeism and withdrawals without notice, a twenty percent (20%) tolerance shall be allowed as to groups and numbers of children specified in this section and as to the total number for which the facility is licensed, except that no more than 25 children shall be attended by one staff member.

d. Each facility may care for school age children in after-school hours up to twenty percent (20%) in excess of the number for which it is licensed. However, if there are more than 10 after-school-hour children, an additional staff member must be present to supervise them during their hours at the facility, and there shall be no more than 25 of these children in the care of any one staff member.

(8) Qualifications for Staff.—Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age. Each staff member employed in a day-care facility supervising children shall be not less than 16 years of age, nor more than 70 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally retarded or mentally ill to an extent that may be injurious to children.

(9) Records.—Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form

furnished or approved by the Board, and shall submit attendance reports as required by the Board.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Board.

All records of any day-care facility, except financial records, shall be subject to review by the Director or by duly authorized representatives of the Board or a cooperating agency who shall be designated by the Director, with the approval of the Board.

Any effort to falsify information provided to the Board shall be deemed by the Board to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care. (1971, c. 803, s. 1.)

§ **110-92. Duties of State and local agencies.**—Nothing in this Article shall be interpreted to interfere with the authority of the State Department of Social Services to visit or approve or disapprove a day-care facility for purchase of care with federal funds available for such purposes or for placement of children from families receiving financial assistance or other services through the State Department of Social Services or a county department of social services. Provided the Department of Social Services shall have no authority to inspect a private day-care facility not choosing to participate in federally purchased day-care or family assistance program financed by public or charitable funds.

When requested by an operator of a day-care facility or by the Director, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum health and sanitation standards developed by the State Board of Health as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Director on forms approved and provided by the Board.

When requested by an operator of a day-care facility or by the Director, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Director on forms provided by the Board so that such reports may serve as the basis for action or decisions by the Director or Board as authorized by this Article. (1971, c. 803, s. 1.)

§ **110-93. Licensing procedure.**—(a) Each operator of a day-care facility shall annually apply to the Board for a license. The application shall be in such form as is required by the Board. Each operator seeking a license shall be responsible for accompanying his application with the necessary supporting data and reports to show conformity with the standards established or authorized by this Article including reports from the local and district health departments, local building inspectors, local firemen, voluntary firemen, and others, on forms which shall be provided by the Board.

(b) If an operator conforms to the standards established or authorized by this Article as shown in his application and other supporting data, the Director shall issue a license effective for one year subject to suspension or revocation for cause as provided in this Article. If the applicant fails to conform to the required standards, the Director or his staff may issue a provisional license under the policies of the Board provided that the operator shall be notified in writing by registered or certified mail of the reasons for issuance of a provisional license.

(c) Each licensed operator of day-care facility must annually apply in order to renew his license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article.

(d) If a licensed day-care facility fails to meet or maintain the standards for a license, the Director shall report such fact to the Board which may thereupon notify, by registered or certified mail, the applicant or licensee of his right to appear before the Board at a specified place and time not less than 10 or more than 60 days from the date of the notice, to show cause, if any exists, why the Board should not deny or revoke the license. If the applicant or licensee fails to satisfy the Board at said hearing that the standards have been maintained, the Board may deny or revoke the license. The operator shall retain any current license pending disposition of any appeal. (1971, c. 803, s. 1.)

§ **110-94. Administrative appeal.**—Upon receipt by the Director of notice of an appeal, the Director shall arrange for an appeal hearing before the Board within 60 days, provided that the Board may delegate the hearing of appeals to a panel consisting of three or more Board members, at least one of whom must be the operator of a licensed private day-care facility, and may designate a chairman of such panel for the purpose of presiding at such hearings. (1971, c. 803, s. 1.)

§ **110-95. Appeal hearing.**—Upon notification by the Board to an operator of his right to appear before the Board as provided in G.S. 110-93(d), or upon receipt of an appeal, the Director shall notify all interested persons of whom he has notice or knowledge of the time and place of the hearing. The operator involved and other persons having a legitimate interest shall have a right to be present, to be represented by counsel, and to present evidence on the issue of whether the standards involved were complied with by the day-care operator and facility. The Director shall notify the appellant and the operator, if other than the appellant, of the decision of the Board in writing by registered or certified mail, including an explanation of the reasons for such decision. The decision of the Board with regard to any license shall be final. All decisions of the Director and of the Board shall be retained by the Board for two years as matters of public record. (1971, c. 803, s. 1.)

§ **110-96. Judicial review of administrative appeals.**—Any party may appeal a decision of the Board to deny or revoke a license to the superior court in the county where the day-care facility is located. Notice of intention to appeal shall be given by registered or certified mail to the Director and to the clerk of superior court of such county within 30 days after receipt of the Board's order by the operator. The right to judicial review shall be deemed waived if notice is not given as herein provided. (1971, c. 803, s. 1.)

§ **110-97. Judicial review hearing.**—The appeal hearing shall be de novo before any superior court judge holding court in the district who shall cause sufficient notice of the appeal hearing to be given to all parties of record. The hearing shall be conducted by the judge without a jury, and the court may affirm, reverse, or modify the Board's order. (1971, c. 803, s. 1.)

§ **110-98. Mandatory license.**—It shall be unlawful for any day-care facility to offer or provide day care without being licensed under the provisions of this Article. In order to provide for gradual implementation of the licensing program, each day-care facility shall register with the Board between January 1 and April 1, 1972, which registration shall be valid in lieu of license until the day-care facility is licensed or until December 31, 1972, whichever is earlier, provided that the Board, upon recommendation of the Director, may extend the validity of such registration in individual cases until July 1, 1973, as to any day-care facility which is not licensed by January 1, 1973. (1971, c. 803, s. 1.)

§ **110-99. Display of license.**—Each day-care facility shall maintain its current license displayed in a prominent place at all times so that the public may be on notice that the facility is licensed and may observe any grade or rating which may appear on the license. (1971, c. 803, s. 1.)

§ **110-100. Licenses are property of the State.**—Any license issued to a day-care facility under this Article shall remain the property of the State and may be removed by persons employed or designated by the Director in the event that the license is not renewed or is revoked or has expired or in the event that the grade or rating is changed. (1971, c. 803, s. 1.)

§ **110-101. Registration.**—It shall be unlawful for any person to offer or provide a day-care plan unless such day-care plan is registered with the Board in accordance with the system for registration which shall be developed by the Board. (1971, c. 803, s. 1.)

§ **110-102. Information for parents.**—The Board shall provide to each operator of a day-care facility a summary of this Article to be furnished by the operator to the parents, guardian, or full-time custodian of each child receiving care in the facility, which summary shall include the name and address of the Director and address of the Board, in such form as shall be provided by the Board to all operators. (1971, c. 803, s. 1.)

§ **110-103. Penalty.**—Any person who violates the provisions of G.S. 110-98 through G.S. 110-102 shall be guilty of a general misdemeanor. (1971, c. 803, s. 1.)

§§ **110-104 to 110-114:** Reserved for future codification purposes.

ARTICLE 8.

Child Abuse and Neglect.

§ **110-115. Short title.**—This Article may be cited as the Child Abuse Reporting Law. (1971, c. 710, s. 1.)

Editor's Note. — Session Laws, 1971, c. 710, s. 8, makes the act effective July 1, 1971.

§ **110-116. Legislative intent and purpose.**—The General Assembly recognizes the growing problem of child abuse and neglect and that children do not always receive appropriate care and protection from their parents or other caretakers acting in loco parentis. The primary purpose of requiring reports of child abuse and neglect as provided by this Article is to identify any children suspected to be neglected or abused and to assure that protective services will be made available to such children and their families as quickly as possible to the end that such children will be protected, that further abuse or neglect will be prevented, and to preserve the family life of the parties involved where possible by enhancing parental capacity for good child care. (1971, c. 110, s. 1.)

§ **110-117. Definitions.**—As used in this Article, unless the context otherwise requires:

(1) "Abused child" means a child less than 16 years of age whose parent or other person responsible for his care:

a. Inflicts or allows to be inflicted upon such child a physical injury by other than accidental means which causes or creates a substantial risk of death or disfigurement or impairment of physical health or loss or impairment of function of any bodily organ, or

b. Creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or disfigurement or impairment of physical health or loss or impairment of the function of any bodily organ, or

c. Commits or allows to be committed any sex act upon a child in violation of law.

(2) "Caretaker" means any person other than a parent who is acting in loco parentis to a child including but not limited to the following: grandparent, uncle or aunt or any blood relative, step-parent; foster parent; house parent or cottage parent or other person supervising a child in a child-caring institution or any State institution, person having custody by court order, and a guardian.

(3) "Director" means a county director of social services.

(4) "Neglected child" means a child less than 16 years of age who comes within the definition of "neglected child" under G.S. 7A-278(4).

(5) "Professional person" means a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law-enforcement officer, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school.

(6) "Protective services" means casework or other counseling services to parents or other caretakers as provided or arranged by a director utilizing the staff of the county department of social services or other community resources which are designed to help such parents or other caretakers to prevent child abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life. (1971, c. 710, s. 1.)

§ **110-118. Reports of child abuse or neglect.**—(a) Any professional person who has reasonable cause to suspect that any child is an abused or neglected child, or any other person having knowledge that any child is an abused child, shall report the case of such child to the director of social services of the county where the child resides or is found.

(b) The report of child abuse or neglect may be made orally, by telephone, or it may be written. The report shall include such information as is known to the person making the report, including the name and address of the child; the name and address of the child's parents or other caretakers; the age of the child; the present whereabouts of the child if not at the home address; the nature and extent of the child's injury or condition resulting from abuse or neglect; and any other information which the person making the report believes might be helpful in establishing the cause of the injuries or the condition resulting from abuse or neglect. If the report of child abuse or neglect is made orally or by telephone, the person making such report shall give his name, address, profession if a professional person, and telephone number if such person has a telephone, and the person making such a report shall confirm the information about child abuse or neglect in writing when requested by the director. If the person making the report is a professional person, the report shall also include his professional opinion as to the nature, extent and causes of the injuries or the condition resulting from abuse or neglect.

(c) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding resulting from the report shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for complying with the requirements of this statute, unless such person acted in bad faith or with malicious purpose.

(d) Any physician or administrator of a hospital, clinic or other similar medical facility to which an abused child is brought for medical diagnosis or treatment shall have the right to retain temporary physical custody of such child where the physician who examines the child certifies in writing that the child should remain for medical reasons or that in his opinion it may be unsafe for the child to return to his parents or other caretakers. In such case, the physician or administrator shall notify the parents or other caretakers and the director of the county where the child resides of such action. If the parents or other caretakers contest this action, the parents shall request a hearing before the chief district court judge or some district court judge designated by him within the judicial district wherein the child resides or where the hospital or institution is located for review and determination of whether the child shall be returned to his parents or caretaker. Pending such juvenile hearing, the hospital, clinic or other similar medical facility may retain temporary physical custody of the child or may request the director in the county where the child resides to assume temporary physical custody of the child for placement with a relative or in a foster home under the supervision of the county department of social services. (1971, c. 710, s. 1.)

§ **110-119. Duty of director of social services.**—Any director of social services receiving a report of child abuse or neglect shall make a prompt and thorough investigation in order to ascertain the facts of the case and to evaluate the extent of the abuse or neglect.

After investigation and evaluation, the director of social services shall do one of the following, depending upon his findings of abuse or neglect in the particular case:

(1) If the director finds that the child has not been abused or neglected, he shall notify the person making the report of his findings.

(2) If the investigation reveals abuse or neglect, the director shall decide whether immediate removal of the child or any other children in the home is necessary for the protection of such child or children.

  a. If immediate removal of the child or other children does not seem necessary, the director shall immediately provide or arrange for protective services. If the parents or other caretakers refuse to accept the protective services provided or arranged by the director, the director shall sign a juvenile petition to invoke the juvenile jurisdiction of the district court for the protection of the child or children.

  b. If immediate removal of the child or children seems necessary for the protection of the child or other children in the home, the director shall sign a juvenile petition which alleges the applicable facts to invoke the juvenile jurisdiction of the district court.

(3) Whether or not the director finds any child to be an abused child, he shall immediately make a report in writing containing his findings along with a copy of the report of child abuse to the district solicitor who shall determine whether criminal prosecution is appropriate and who may request the director to sign the appropriate criminal warrant.

(4) The director shall submit a report of the alleged child abuse or neglect to the central registry under the policies adopted by the State Board of Social Services.

In performing any of these duties, the county director may utilize the staff of the county department of social services or any other public or private community agencies that may be available. The director may also consult with the available state or local law-enforcement agencies who shall assist in the investigation and evaluation of the seriousness of any report of child abuse or neglect when requested by the director. (1971, c. 710, s. 1.)

§ **110-120. Immunity of persons reporting.**—Any person making a complaint or providing information or otherwise participating in the program authorized by this Article shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without reasonable cause. (1971, c. 710, s. 1.)

§ **110-121. Waiver of privileges.**—Neither the physician-patient privilege nor the husband-wife privilege shall be ground for excluding evidence of child abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a child's abuse or neglect is in issue, nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications. (1971, c. 710, s. 1.)

§ **110-122. Central registry.**—The State Department of Social Services shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same child or of other children in the same family. This data shall be furnished by county directors of social services to the State Department of Social Services and shall be confidential, subject to policies adopted by the State Board of Social Services which provide for its appropriate use for study and research, but in no event shall any data be used at any hearing or court proceeding unless based upon a final judgment of a court of law. (1971, c. 710, s. 1.)

Chapter 111.

Commission for the Blind.

Article 1.

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ARTICLE 1.

Organization and General Duties of Commission.

§ 111-1. Commission created; appointment by Governor; chairman.—There is hereby established a State Commission, to be known as the North Carolina State Commission for the Blind, consisting of nine members, to be appointed by the Governor. Three members shall be appointed for terms of one year, three for terms of three years, and three for terms of five years. Upon the expiration of their terms, their successors shall be appointed for terms of five years. Any vacancy arising for any cause other than expiration of a term shall be filled by appointment by the Governor for the unexpired term. The Governor shall designate a chairman from among the membership of the Commission. (1935, c. 53, ss. 1, 2; 1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236; 1969, c. 1255, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

Session Laws 1969, c. 1255, s. 6, provides: "The terms of all incumbent members of the present State Commission for the Blind shall expire on the effective date of this act." The act was ratified July 2, 1969 and made effective upon ratification.

State Government Reorganization.—The State Commission for the Blind was transferred to the Department of Human Resources by § 143A-144, enacted by Session Laws 1971, c. 864.

§ 111-2. Meetings.—The Commission shall meet at such times and places as the Commission may determine, but it shall hold at least one meeting every three months. The chairman shall have authority to call special meetings when he deems it desirable. (1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236; 1969, c. 1255, s. 2.)

Editor's Note. — Session Laws 1969, c. 1255, rewrote this section, which formerly related to the terms of office of the members of the Commission. For present provisions as to terms of office, see § 111-1.

§ 111-3. Director.—The Commission shall appoint a director to serve as a chief administrative and executive officer who shall serve at the pleasure of the Commission and shall perform such duties and exercise such powers as the

Commission may authorize and direct. The position of director shall be subject to all the provisions of the State Personnel Act. (1969, c. 1255, s. 3.)

Editor's Note. — Session Laws 1969, c. 1255, rewrote this section, which formerly provided for three additional members of the Commission, and their terms of office, and for meetings of the Commission. For present provisions as to membership and terms of the Commission, see § 111-1. For present provisions as to meetings of the Commission, see § 111-2.

§ 111-6.1. Rehabilitation center for the adult blind. — In addition to other powers and duties granted it by law, the North Carolina State Commission for the Blind is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the intent and purpose of such a rehabilitation center.

The State Commissioner for the Blind is hereby authorized to receive grants in aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (volume 57, United States Statutes at Large, chapter 190). Visually handicapped persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4; 1971, c. 1215, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, in the last sentence of the third paragraph, substituted "Visually handicapped persons as defined in G.S. 111-11, who are physically present in North Carolina" for "Blind persons, who have been residents of North Carolina for one year immediately preceding the date of application for rehabilitation services or who show an established intent to reside continuously in this State," and deleted "said" preceding "Barden-Rehabilitation Act."

§ 111-11. Definition of visually handicapped person.—For purpose of this Chapter, visually handicapped persons are those persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. (1935, c. 53, s. 10; 1939, c. 124; 1971, c. 1215, s. 3.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

§ 111-12.4. Transfer of funds.—On or before September 1, 1967, any funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind shall be transferred to the State Treasurer to the extent that such funds in the aggregate exceed the amount of one hundred thousand dollars ($100,000.00). (1967, c. 1214.)

§ 111-12.5. Reserve and operating capital fund.—Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind not exceeding one hundred thousand dollars ($100,000.00) shall be retained by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization as a reserve and operating capital fund to be expended by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor for its lawful purposes and objectives, under direction and approval of the North Carolina State Commission for the Blind (1967, c. 1214.)

§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.—All funds required under this article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the North Carolina State Commission for the Blind, and all future net earnings and accumulations of said bureau or its successor, other than the one hundred thousand dollar ($100,000.00) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the North Carolina State Commission for the Blind. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the North Carolina State Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214.)

ARTICLE 2.

Aid to the Needy Blind.

§ 111-15. Eligibility for relief. — Blind persons having the following qualifications shall be eligible for relief under the provisions of this Article:

(3) Who, at the time his application is filed, is living in the State of North Carolina voluntarily with the intention of making his home in the State and not for a temporary purpose.

(1971, c. 1215, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote subdivision (3).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3) are set out.

§ 111-16. Application transmitted to Commission; notice of award; review by Commission.—Promptly after an application for aid is made to the board of county commissioners under this Article the North Carolina State Commission for the Blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina State Commission for the Blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina State Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina State Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina State Commission for the Blind copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina State Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina State Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the North Carolina State Commission for the Blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be taken by the applicant, the North Carolina State Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina State Commission for the Blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the members of the North Carolina State Commission for the Blind. The procedure in such cases shall be as provided in this section on appeals to the Commission by the applicant. (1937, c. 124, s. 5; 1971, c. 603, s. 1.)

Editor's Note. — The 1971 amendment substituted "director" for "secretary" in the last sentence of the fourth paragraph.

§ **111-18. Payment of awards.** — After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina State Commission for the Blind the North Carolina State Commission for the Blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina State Commission for the Blind shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the executive director of the North Carolina State Commission for the Blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure.

It is intended that awards paid to recipients under this Article be for the purpose of assisting in defraying the recipient's day to day living expenses. To better achieve this purpose it is hereby provided that no moneys belonging to a recipient of aid to the blind under this Article identifiable as moneys paid pursuant to an aid to the blind award shall be subject to levy under execution, attachment or garnishment. (1937, c. 124, s. 7; 1971, c. 177; c. 603, s. 2.)

Editor's Note.—The first 1971 amendment, effective July 1, 1971, added the last paragraph.

The second 1971 amendment substituted "director" for "secretary" in the second sentence.

§ **111-19. Intercounty transfer of recipients.**—Any recipient of aid to the blind under this Article who moves to another county of this State shall be entitled to receive aid to the blind in the county to which he has moved and the board of county commissioners of such county, or its authorized agent, is hereby directed to make the appropriate aid to the blind grant to such recipient subject to the rules and regulations of the North Carolina State Commission for the Blind, beginning with the next payment period after such recipient has established settlement in the county to which he has moved by continuously maintaining a residence therein for a period of 90 days. The county from which a recipient moves shall continue to pay aid to such recipient until such time as the recipient becomes qualified to receive aid from the county to which he has moved. The county from which a recipient has moved shall forthwith transfer all necessary records relating to the recipient to the appropriate board of county commissioners, or its authorized agent, of the county to which the recipient has moved immediately upon the recipient becoming qualified to receive aid from such county. (1937, c. 124, s. 8; 1947, c. 374; 1965, c. 905; 1971, c. 190, ss. 1, 2.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, rewrote this section.

§ 111-20. Awards subject to reopening upon change in condition.—All awards to needy blind persons made under the provisions of this Article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The North Carolina State Commission for the Blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations annually, or more often, as may be found necessary. The North Carolina State Commission for the Blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this Article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina State Commission for the Blind, and shall be subject to the right of appeal and review, as provided in G.S. 111-16. (1937, c. 124, s. 9; 1971, c. 160.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "annually" for "biannually" in the second sentence.

§ 111-24. Cooperation with federal departments or agencies; grants from federal government.—The North Carolina State Commission for the Blind is hereby empowered, authorized and directed to cooperate with the appropriate federal department or agency charged with the administration of the Social Security Act in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this Article, including the making of such reports in such form and containing such information as the appropriate federal department or agency may from time to time require, and the compliance with such regulations as the appropriate federal department or agency may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina State Commission for the Blind is hereby further empowered and authorized to receive grants-in-aid from the United States government for assistance to the blind and grants made for payment of cost of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the North Carolina

State Commission for the Blind in carrying out the provisions of the Article. (1937, c. 124, s. 13; 1971, c. 349, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "appropriate federal department or agency charged with the administration of the Social Security Act" for "federal Social Security Board, created under Title X of the Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five" near the beginning of the first paragraph and "appropriate federal department or agency" for "federal Social Security Board" and for "said Board" near the end of the first paragraph. The amendment also substituted "the compliance" for "comply" near the end of the first paragraph.

§ **111-25. Acceptance and use of federal aid.**—The Commission for the Blind may expend under the provisions of the Executive Budget Act, such grants as shall be made to it for paying the cost of administering this Chapter by the appropriate federal department or agency under the Social Security Act. (1937, c. 124, s. 14; 1971, c. 349, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, inserted "to it" near the middle of the section and substituted "appropriate federal department or agency under the Social Security Act" for "federal government under Title X of the Social Security Act" at the end of the section.

§ **111-27.1. Commission authorized to conduct certain business operations.**—For the purpose of assisting blind persons to become self-supporting the North Carolina State Commission for the Blind is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day by day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the State Commission for the Blind. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor. Blind or visually handicapped employees or vending-stand operators employed by the North Carolina State Commission for the Blind, Bureau of Employment for the Blind Division, are hereby declared to be State employees. (1945, c. 72, s. 2; 1971, c. 1025, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the last sentence.

§ **111-27.2. Blind vending stand operators; retirement benefits.**—The North Carolina State Commission for the Blind is authorized and empowered to continue and maintain, in its discretion, any existing retirement system providing retirement benefits for blind vending stand operators and to expend funds to provide necessary contributions to any existing retirement system for blind vending stand operators to the extent that the Commission determines such retirement system to be in the best interest of the blind vending stand operators. (1969, c. 1255, s. 4.)

§ **111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.**—The North Carolina State Commission for the Blind is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind, to be used in carrying out the provisions of this law.

The North Carolina State Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina State Commission for the Blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The North Carolina State Commission for the Blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the State Commission for the Blind or the board of county commissioners or the county welfare department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the North Carolina State Commission for the Blind is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. (1939, c. 124; 1941, c. 186; 1969, c. 871.)

Editor's Note. — The 1969 amendment added the last paragraph.

§ 111-30. Personal representatives for certain recipients of aid to the blind.—If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested person, or by the Director of Social Services before the appropriate court under G.S. 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Director of Social Services in the selection of a suitable person for appointment as personal representative for the limited purposes of G.S. 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2; 1971, c. 603, s. 3.)

Editor's Note. — The 1971 amendment substituted "Director of Social Services" for "Director of Public Welfare" near the middle of the first paragraph and in the sixth sentence of the second paragraph.

§ 111-31. Courts for purposes of §§ 111-30 to 111-33; records.— For the purposes of G.S. 111-30 to 111-33 the court may be either a domestic relations court established pursuant to Article 13, Chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of G.S. 111-30 to 111-33, direct the Director of Social Services to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2; 1971, c. 603, s. 4.)

Editor's Note. — The 1971 amendment substituted "Director of Social Services" for "Director of Public Welfare" in the second sentence.

§ 111-34. Advisory committees.—(a) There shall be a blind advisory committee composed of six persons appointed by the Governor who are visually handicapped to the extent of being legally blind. The duty of this committee shall be to advise the Commission on the needs of the citizens of this State who are visually handicapped to the extent of being legally blind.

(b) There shall be a professional advisory committee composed of six persons, three of whom shall be licensed physicians whose practice is limited to ophthalmology and three optometrists appointed by the Governor from recommendations submitted by the Medical Society of North Carolina and the North Carolina State Optometric Society respectively. It shall be the duty of this committee to advise the Commission on matters concerning or pertaining to the procurement, utilization and rendering of professional services by said practitioners to the beneficiaries of the Commission's aid and services.

(c) Of the committees appointed, on each committee two members shall be appointed for a term of three years, two members appointed for a term of two years and two members appointed for a term of one year. At the expiration of the term of any committee member, his successor shall be appointed for a term of three years. The members of these committees shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, may be paid out of moneys available for this purpose. (1969, c. 1255, s. 7.)

State Government Reorganization.—The blind advisory and professional advisory committees were transferred to the Department of Human Resources by § 143A-145, enacted by Session Laws 1971, c. 864.

§ 111-35. Authority of director of social services.—The respective boards of county commissioners of each county are hereby authorized to empower and confer upon the county director of social services for their respective counties the authority to perform any or all acts or functions which the previous sections of this Article direct or authorize the county boards of commissioners to perform. Any act or function performed by a county director of social services under the authority of this section shall be reported by him to the respective county board of commissioners for its review, and for alternative action or disposition where deemed appropriate by such board. Provided that the respective boards of county commissioners shall make no alternative or different disposition of a matter which the county director of social services is empowered to act upon which would prejudicially affect the status of any aid to the blind recipient without first affording such recipient reasonable notice and opportunity to be heard. (1971, c. 348, s. 1.)

Editor's Note.—Session Laws 1971, c. 348, s. 2, makes the act effective July 1, 1971.

Chapter 112.

Confederate Homes and Pensions.

ARTICLE 1.

Confederate Woman's Home.

§ 112-1. Incorporation and powers of Association.—Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate Soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1980. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222; 1969, c. 116.)

Editor's Note. — The 1969 amendment substituted "January 1, 1980" for "January 1, 1970" in the second paragraph.

State Government Reorganization.—The Confederate Woman's Home Association was transferred to the Department of Human Resources by § 143A-159, enacted by Session Laws 1971, c. 864.

ARTICLE 2.

Pensions.

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ 112-21. Removal from pension lists of persons eligible for old age assistance. — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for aid to the aged or disabled under the provisions of chapter 108 of the General Statutes, from and after the first day of June one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for aid to the aged or disabled under the provisions of chapter 108 of the General Statutes without any applications being made by such persons for aid to the aged or disabled as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of welfare to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amount necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102; 1969, c. 981, ss. 2, 3.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "aid to the aged or disabled" for "old age assistance" and "chapter 108 of the General Statutes" for "§§ 108-15 to 108-76" near the beginning of the section and in the first sentence of the second paragraph.

State Government Reorganization.—The State Board of Pensions was transferred to the Department of State Auditor by § 143A-29, enacted by Session Laws 1971, c. 864.

Chapter 113.

Conservation and Development.

SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

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113-189. Protection of sea turtles and porpoises.

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about estuarine waters or state-owned lakes.
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Article 23A.

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113-313. Action of Board on application.
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SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

ARTICLE 1.

Organization and Powers.

§ 113-1. Meaning of terms.

State Government Reorganization.—The Department and Board of Conservation and Development were transferred to the Department of Natural and Economic Resources by § 143A-117, enacted by Session Laws 1971, c. 864.

§ 113-4. Board of Conservation and Development. — The control and management of the Department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of twenty-seven members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45; 1961, c. 197, s. 1; 1965, c. 826, s. 1; 1969, c. 271, s. 1.)

Editor's Note.—

The 1969 amendment substituted "twenty-seven members" for "twenty-four members" at the end of the section.

§ 113-5. Appointment and terms of office of Board.—All members of the Board of Conservation and Development shall be appointed by the Governor. The Governor may designate one member of the Board to serve as its chairman. In the event the Governor does not designate a chairman, the Governor shall be chairman. In making appointments to the Board, the Governor shall, as nearly as possible, appoint an equal number of persons interested in conservation, in development and in parks and tourist industry. All present and future members appointed to the Board shall serve at the pleasure of the Governor and until their successors are appointed and qualify. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1; 1953, c. 81; 1957, c. 1428; 1961, c. 197, s. 2; 1965, c. 826, s. 2; 1969, c. 271, s. 2.)

Editor's Note.—

The 1969 amendment rewrote the section.

§ **113-5.1. Officers.**—The Governor shall appoint a member of the Board to serve as vice-chairman. The chairman, with the advice of the Director, shall appoint a person to be secretary to the Board who need not be a member of the Board.

The chairman shall preside at all meetings of the Board, shall appoint members of the Board to each of the Board's committees and shall designate the chairman of each committee after consultation with the Governor and the Director of the Department. The chairman shall have authority to vote on all matters coming before the Board.

It shall be the duty of the vice-chairman to perform the duties of the chairman in his absence, and he shall perform such other duties as the chairman may direct.

The secretary shall record all votes and shall prepare and keep a permanent record of the minutes of all meetings of the Board. The secretary shall perform such other duties as the chairman may direct. (1969, c. 271, s. 3.)

§ **113-12. Heads of divisions, experts and assistants; new divisions; deputy and assistant directors.**—The Director shall appoint, subject to the approval of the Board, the heads of the divisions and such experts and assistants as may be necessary to enable him to carry on successfully the work of the Department, and may, with the approval of the Board, assign to the heads of the divisions and other appointees such duties as may be deemed appropriate.

The Director, subject to the approval of the Board, shall have authority to establish new divisions within the Department and to appoint deputy directors and assistant directors of the Department. (1925, c. 122, s. 15; 1953, c. 808, s. 3; 1969, c. 271, s. 4.)

Editor's Note.—The 1969 amendment added the second paragraph.

§ **113-14.1. Promotion of seashore industry and recreation.**—(a) The Director of the Department of Conservation and Development, after the approval of the Board of Conservation and Development, is authorized to create within the Department of Conservation and Development a division for the purpose as hereinafter set out, and to provide the necessary personnel and equipment for such division. Said division shall be given a suitable name by the Board of Conservation and Development. In the event the Director of Conservation and Development determines that the creation of a new division in the Department of Conservation and Development is not feasible, the powers and duties set out in subsection (b), after the approval of the Board of Conservation and Development, may be delegated by the Director to the administrative head of an existing division of the Department of Conservation and Development.

(b) The following powers are hereby granted to the Director of the Department of Conservation and Development and may be delegated to the administrative head of an existing or new division of the Department as herein authorized:

(1) Assist in the sound development of the seacoast areas of the State, giving emphasis to the advancement and development of the travel attractions and facilities for accommodating travelers in these areas;

(2) Plan and promote recreational and industrial developments in these areas,

with emphasis upon making the seashore areas of North Carolina attractive to visitors and to permanent residents;

(3) Coordinate the activities of local governments, agencies of the State and agencies of the federal government in planning and development of the seacoast areas for the purpose of attracting visitors and new industrial growth;

(4) Study the development of the seacoast areas and implement policies which will promote the development of the coastal area, with particular emphasis upon the development of the scenic and recreational resources of the seacoast;

(5) Advise and confer with various interested individuals, organizations and State, federal and local agencies which are interested in development of the seacoast area and use its facilities and efforts in planning, developing, and carrying out overall programs for the development of the area as a whole;

(6) Act as liaison between agencies of the State, local government, and agencies of the federal government concerned with development of the seacoast region;

(7) Make an annual report to the Board of Conservation and Development;

(8) Make such reports to the Governor as he may request;

(9) File such recommendations or suggestions as it may deem proper with other agencies of the State, local or federal governments.

Provided, however, that the provisions of this section and § 113-14.2 shall not be construed as affecting the authority of the Department of Water and Air Resources concerning shore-erosion control or prevention, beach protection, or hurricane protection under G.S. 143-355 or any other provision of law. (1969, c. 1143, ss. 2, 3.)

Editor's Note. — Session Laws 1969, c. 1143, s. 11, makes the act effective July 1, 1969. Section 9 of the act provides, in part: "On the effective day of this act, the records, property, supplies and equipment of the North Carolina Seashore Commission shall be transferred to the Department of Conservation and Development."

§ **113-14.2**: Repealed by Session Laws 1971, c. 882, s. 8, effective July 1, 1971.

Cross Reference. — See Editor's note under § 113-14.1.

§ **113-15.1**: Repealed by Session Laws 1969, c. 1145, s. 4, effective July 1, 1969.

Cross Reference.—As to transfer of functions, property, etc., of the Division of Community Planning to the Department of Local Affairs, see § 143-326.

§ **113-15.2. Investigation of impact of proposed new and expanding industry.**—It is hereby declared to be the duty of the Department of Conservation and Development, in the process of exercising its powers to promote the development of commerce and industry, to conduct an evaluation in conjunction with other State agencies having environmental responsibilities of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. In order to discharge this duty, the Director of the Department, with the approval of the Board, may hire persons expressly to conduct investigations and evaluations of new and expanding industry and to prepare reports outlining the impact of such industry on the environment. The Director may also, subject to approval by the Board, adopt such rules and regulations as he may deem necessary to carry out this duty. (1971, c. 824.)

ARTICLE 1B.

Aviation.

§ **113-28.5. Legislative intent.**—It is the declared intention of the General Assembly to authorize, subject to the limitations and conditions of this article, the provision of State aid in the form of loans and grants to the cities, counties and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county or public authority airport facilities; and to authorize related programs of education, promotion and long-range planning for such facilities. (1967, c. 1006, s. 1.)

Editor's Note. — Session Laws 1967, c. 1006, s. 2, provides: "There is hereby appropriated out of the general fund, to the Department of Conservation and Development, in addition to all other sums appropriated to said Department, for the purpose of carrying out the provisions of this act, the sum of two hundred and fifty thousand dollars ($250,000.00) for the fiscal year beginning on July 1, 1967 and ending June 30, 1968."

§ **113-28.6. Designation of administering agency.**—The Department of Conservation and Development, Commerce and Industry Division, is hereby designated as the State agency to carry out the purposes of this article subject to the general supervisory powers of the Director and the Board of Conservation and Development of the Department. In exercising such powers the Department shall:

(1) Prepare and develop standards, criteria, and policies for the most efficient and economical expenditure of such State funds as may be appropriated for purposes of this article; including consultation with the State Highway Commission, concerning road and runway construction.

(2) Publish and make available to aviation interests, the Federal Aviation Agency, and the people of the State generally current information regarding such criteria, standards, and policies.

(3) Prepare and keep current a State airport plan and submit annual revisions of that plan to the Federal Aviation Agency.

(4) Make detailed and thorough study of all applications for State assistance authorized herein and make specific recommendations regarding each such application to the Board of Conservation and Development and to the Federal Aviation Agency.

(5) Recommend annually, or more often if the Department deems necessary, a plan of priorities and allocations of State funds to the Board of Conservation and Development.

(6) Represent the State before all federal agencies and elsewhere where the aviation interests of the State may be affected.

(7) Subject to the availability of funds for the purpose, conduct such promotional, educational and other programs as may be necessary to keep the people of the State properly informed with respect to aviation, and to further aeronautics generally throughout the State.

(8) In exercising the foregoing powers, the Department of Conservation and Development shall consult with and seek the advice of the committee known as "The Governor's Aviation Committee." Such committee shall consist of 11 members appointed by the Governor, who in making such appointments, shall designate one person from each of the congressional districts of the State. The Governor shall designate the chairman. Six members shall be appointed to serve for terms of four years each, and five members shall be appointed to serve for terms of two years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed

for terms of four years each. At least four of these members, so appointed, shall possess a broad knowledge of aviation and airport development. All members appointed to the committee shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said committee because of death, resignation, or otherwise shall be filled by the Governor for the unexpired term of such member. Members of the committee shall meet twice each year and shall receive as compensation for their services seven dollars ($7.00) for each day actually engaged in the exercise of the duties of the committee and such travel expenses and subsistence allowances as are generally allowed other State Commissions and Boards. (1967, c. 1006, s. 1.)

State Government Reorganization.—The Governor's Aviation Committee was transferred to the Department of Transportation and Highway Safety by § 143A-104, enacted by Session Laws 1971, c. 864.

§ **113-28.7. Activities eligible for State aid.** — Loans and grants of State funds may be made for the planning, acquisition, construction, or improvement of any airport owned or controlled, or which will be owned and controlled by any city, county or public airport authority acting by itself or jointly with any other city or county. An airport development project or activity eligible for State aid under this article shall also be deemed to include projects, such as air navigation facilities, aviation easements, and the acquisition of land, lighting, marking, or elimination of airport hazards. (1967, c. 1006, s. 1.)

§ **113-28.8. Limitations on State financial aid.**—Grants and loans of funds authorized by this article shall be subject to the following conditions and limitations;

(1) Loans and grants may be made for such projects, activities, or facilities as would be in general eligible for approval by the Federal Aviation Agency or its successor agency or agencies in administering the federal aid airport program and/or the national airport plan pursuant to the Federal Airport Act, Public Law 377, 79th Congress, approved May 13, 1946, as amended.

(2) Loans and grants shall be limited to municipal, county and public authority airports which are, or which would be if constructed according to plans approved by the Federal Aviation Agency, a general purpose noncarrier airport as defined by the Federal Aviation Agency.

(3) Loans and grants of State funds shall be limited to a maximum of twenty-five percent (25%) of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, that the State may participate in up to fifty percent (50%) of the total cost of land easements, land purchases, runway lights and approach facilities (visual and electronic).

(4) All loans and grants of State funds made or authorized pursuant to this article shall be subject to the prior approval of the Board of Conservation and Development. (1967, c. 1006, s. 1; 1969, c. 293.)

Editor's Note. — The 1969 amendment added the proviso at the end of subdivision (3).

§ **113-28.9. Sources of State funds.**—State financial assistance under this article shall be limited to appropriations of funds made for the purpose by the General Assembly to the Department of Conservation and Development, or to private funds which may become available to the Department for such purpose. (1967, c. 1006, s. 1.)

§ 113-28.10. Acceptance, receipt, accounting, and expenditure of State and federal funds.—All North Carolina municipalities, counties and public airport authorities are hereby authorized to accept, receive, receipt for, disburse and expend State funds, and other funds, public and private, which may be made available to them to accomplish any purpose of this article. All federal funds accepted and expended by any municipality or county shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the United States and not inconsistent with State law. All State funds accepted by any municipality, county or public airport authority shall be accepted, accounted for, and expended according to such terms and conditions as may be prescribed by the State Department of Conservation and Development. Unless otherwise prescribed by the federal or State agency from which funds were made available, the chief financial officer of the municipality, county or public airport authority shall deposit all funds received and keep the same in separate funds according to the purpose for which they were received. The accounting of all such funds shall be subject to the municipal and county Fiscal Control Acts. (1967, c. 1006, s. 1.)

Cross Reference.—See Editor's note to § 113-28.5.

§ 113-28.11. Receipt of federal grants.—(a) The North Carolina Department of Conservation and Development is hereby designated as the State agency to accept grants made by the United States, under the "Aviation Facilities Expansion Act of 1969" or any substantially similar federal law. The Department of Conservation and Development shall have authority to disburse said grants in accordance with applicable federal laws and regulations and to enter into contracts with the federal government, municipalities, counties or airport authorities in connection with said grants.

(b) The Department of Conservation and Development shall have authority to act as agent of any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary of Transportation of the United States an application for financial assistance under the provisions of the Aviation Facilities Expansion Act of 1969 or any similar federal act. (1969, c. 1109, ss. 1, 2.)

§ 113-28.12. Acquisition of land by Department.—The Department of Conservation and Development shall also have authority to acquire by purchase, gift, devise, lease, condemnation, or otherwise, any property, real or personal, or any interest therein, including easements, necessary to establish or develop airports. (1969, c. 1109, s. 3.)

ARTICLE 1C.

Commission on International Cooperation.

§ 113-28.13. Commission established; duties.—There is hereby established within the Department of Conservation and Development the North Carolina Commission on International Cooperation. It shall be the duty of the Commission to undertake programs of information and education designed to enlarge the understanding and support of the citizens of North Carolina with respect to improved trade and other economic and developmental relations with foreign countries, increased communication with other people for understanding and cultural improvement, international cooperation in matters of conservation of the environment, constructive policies for national security and peace, and enlightened and beneficial relations among the nations of the world. (1971, c. 532, s. 1.)

Editor's Note.—Session Laws 1971, c. 532, s. 5, makes the act effective July 1, 1971.

§ 113-28.14. Membership; appointment.—The North Carolina Commission on International Cooperation shall consist of 11 members, three of whom shall be appointed by the President of the Senate, three of whom shall be appointed by the Speaker of the House, and five of whom shall be appointed by the Governor. Of the initial members of the Commission, three shall be appointed for a term of one year, four shall be appointed for a term of two years, and four shall be appointed for a term of three years. All subsequent appointments for a regular term shall be for a term of three years. The Governor shall appoint a person to fill for the remainder of the unexpired term any vacancy occurring for any reason other than the expiration of a term of office. (1971, c. 532, s. 2.)

§ 113-28.15. Officers. — The Commission shall annually elect from its membership a chairman, and it may elect such other officers as it deems necessary. (1971, c. 532, s. 3.)

§ 113-28.16. Commission powers.—The Commission shall have power:

(1) To adopt bylaws for its own government;
(2) To adopt policies, rules, and regulations for the conduct of its affairs;
(3) To employ and define the duties of such professional, technical, and clerical personnel as it deems necessary, within the availability of funds for their support;
(4) To establish such committees and other subordinate bodies as it deems advisable and to define their duties;
(5) To receive gifts, grants, and other forms of assistance, financial and otherwise, for the furtherance of its objectives;
(6) To make a biennial report to the Governor and the General Assembly on the activities of the Commission. (1971, c. 532, s. 4.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by North Carolina Forest Service.—The Department of Conservation and Development through the Division of Forestry, to be known and hereafter designated as the North Carolina Forest Service, shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.
(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.
(3) To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.
(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.
(5) To acquire small areas of suitable land in the different regions of the

State on which to establish small, model forests which shall be developed and used by the said Department of Conservation and Development as State demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1; 1969, c. 342, s. 1.)

Editor's Note. — The 1969 amendment inserted, in the opening paragraph, "to be known and hereafter designated as the North Carolina Forest Service."

§ 113-29.1. Growing of timber on unused State lands authorized.—The Department of Administration may allocate to the Department of Conservation and Development, for management as a State forest, any vacant and unappropriated lands, any marsh lands or swamp lands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as Research Stations shall not be subject to the provisions of this section. The Department of Conservation and Development, through the Forest Service, shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Director of Conservation and Development may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Director of Conservation and Development, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Forest Service. (1957, c. 584, s. 1; 1969, c. 342, s. 2.)

Editor's Note. — The 1969 amendment substituted "Forest Service" for "Division of Forestry" in the third sentence and for "Forestry Division" in the last sentence.

§ 113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.

Deed Conveying Revolutionary War Battle Site to State for Specific Purposes Held to Be Absolute.—See Roten v. State, 8 N.C. App. 643, 174 S.E.2d 384 (1970).

§ 113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc., operation of public service facilities; concessions to private concerns.—Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. The Department shall have authority to establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules and regulations of the Department of Conservation and Development. When the State Forester determines that a surplus of seedlings or seed exists, this surplus may be sold to other states, agencies of the federal government or recognized research organizations. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such properties of the State and at the courthouse of the county or counties in which such properties are situated shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding thirty days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own regulations;

(2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Board of Conservation and Development shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2; 1969, c. 343.)

Editor's Note.—

The 1969 amendment rewrote the first paragraph.

ARTICLE 2A.

Forestry Advisory Committee.

§ **113-44.1. Forestry Advisory Committee created; officers; meetings.**—(a) There is hereby created the North Carolina Forestry Advisory Committee, hereinafter called "Committee," to be composed of eleven members, all appointed by and to serve at the pleasure of the Governor. Three members shall represent wood-using industries; two members shall represent forest landowners; two members shall represent nontimber forest resource interests; two members shall represent the public; one member shall represent forestry organizations and one member shall represent banking and financial interests. All persons appointed to the Committee shall be persons of practical knowledge in the field they are to represent. Members of the Committee shall serve without compensation.

(b) The Governor shall designate one member of the initial Committee as chairman who shall serve as chairman for one year. Thereafter, yearly, the Committee shall elect its own chairman. The Committee shall select its own vice-chairman who shall serve for a term of one year and who shall preside in the absence of the chairman and perform such other duties as the chairman shall direct. Both the chairman and vice-chairman shall be eligible to serve successive terms. A quorum for any meeting of the Committee shall be seven members. The chairman and vice-chairman may vote on all matters coming before the Committee. The Committee shall select a secretary who need not be a member of the Committee. It shall be the duty of the secretary to keep a permanent written record of the meetings of the Committee.

(c) The Committee shall meet at least twice each year and more often if directed by the Board of Conservation and Development or if at least eight members of the Committee request in writing that the chairman call a meeting. The Committee shall hold all its meetings within the State. (1969, c. 1055, ss. 1, 2.)

State Government Reorganization.—The Forestry Advisory Committee was transferred to the Department of Natural and Economic Resources by § 143A-113, enacted by Session Laws 1971, c. 864.

§ 113-44.2. Duties; reports.—It shall be the duty of the Committee to advise the Board of Conservation and Development with respect to all matters concerning the conservation and development of both state-owned and privately owned forests in the State. The Committee shall undertake such studies and make such reports to the Board of Conservation and Development and the Governor as the Board or Governor may direct. In addition, the Committee may make such studies, reports and recommendations to the Board of Conservation and Development and Governor as it shall deem in the interests of the conservation and developments of the forests within the State. (1969, c. 1055, s. 3.)

Article 3.

Private Lands Designated as State Forests.

§ 113-48. Forest rangers appointed.—The forester of the Department of Conservation and Development may appoint, with the approval of the Board of Conservation and Development, as forest rangers such a man or men over 18 years of age as may be recommended for appointment by the owner or owners of such State forest. Such forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; C. S., s. 6130; 1951, c. 575; 1955, c. 910, s. 1; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one" in the first sentence.

Article 4A.

Protection of Forest against Insect Infestation and Disease.

§ 113-60.4. Purpose and intent.—The purpose of this article is to place within the Department of Conservation and Development, North Carolina Forest Service, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases. (1953, c. 910; 1969, c. 342, s. 3.)

Editor's Note. — The 1969 amendment substituted "North Carolina Forest Service" for "Division of Forestry."

§ 113-60.5. Authority of the Department of Conservation and Development.—The authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the Department of Conservation and Development, North Carolina Forest Service. The administration of the provisions of this article, shall be by the State Forester, under the general supervision of the Director of the Department of Conservation and Development. The provisions of this article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture under existing statutes. (1953, c. 910; 1969, c. 342, s. 3.)

Editor's Note. — The 1969 amendment substituted "North Carolina Forest Service" for "Division of Forestry."

Article 4B.

Southeastern Interstate Forest Fire Protection Compact.

§ 113-60.15. Agreements with noncompact states.—The North Carolina Forest Service, with the prior approval of the Board of Conservation and Development, is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any Province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact. (1971, c. 1171.)

Article 6.

Fishing Generally.

§ **113-78. Fishing in lakes partially in another state.**—(a) Notwithstanding any other provision of law, or any rule or regulation of the North Carolina Wildlife Commission, it shall be lawful for any person who is a resident of a state adjoining North Carolina and who has in his possession a current valid fishing license issued by the state of his residence to fish in any lake or impoundment of water which lies partially in his state of residence and partially in this State.

(b) This section shall apply only to lakes and impoundments of water lying partially in this State and a state adjoining this State.

(c) This section shall apply only to persons fishing from boats.

(d) This section shall apply only to residents of a state which extends similar privileges to residents of North Carolina fishing in such state. (1971, c. 131, ss. 1-4.)

Editor's Note.—Session Laws 1971, c. 131, adding this section, is effective July 1, 1971.

Article 6A.

Forestry Services and Advice for Owners and Operators of Forest Land.

§ **113-81.1. Authority to render scientific forestry services.** — The North Carolina Department of Conservation and Development is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee, representing the State Forester's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the State Forester and the Board of Conservation and Development deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forest lands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department of Conservation and Development, North Carolina Forest Service for the furtherance of these activities. (1947, c. 384, s. 1; 1969, c. 342, s. 3; c. 344.)

Editor's Note. — Session Laws 1969, c. 344 added all of this section following the first sentence. "North Carolina Forest Service" has been substituted for "Forestry Division" near the end of the amended section pursuant to Session Laws 1969, c. 342.

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§ 113-83. Definitions.

Stated in State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

§ 113-84. Powers and duties of the Board of Conservation and Development.

State Government Reorganization.—The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources by § 143A-118, enacted by Session Laws 1971, c. 864.

§ 113-87. Permits to kill game injurious to agriculture.—The Board shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for restocking, or may be disposed of in such other manner as it may determine: Provided, that birds and animals committing depredations may be taken at any time without a permit while committing, or about to commit, such depredations; provided, further, it shall be unlawful to kill a bear unless the same is in the act of committing depredations and nothing contained herein shall authorize the hunting of any bear with dogs during the closed season thereon. Any permit issued pursuant to this section shall expire within four months after the date of issuance. (1935, c. 486, s. 4; 1971, c. 423, s. 2; c. 809, s. 1.)

Editor's Note.—Session Laws 1971, c. 423, s. 2, as amended by Session Laws 1971, c. 809, s. 1, added the second proviso to the first sentence.

§ 113-91. Powers of Commissioner.

(1) To Issue Permits. — The Commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes, but no wild animals or wild birds shall be held in captivity under inhumane or unsanitary conditions. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars ($2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license If the Commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a State game department or Commission to restock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in do-

mestication pursuant to the provisions of this article and to the regulations of the Board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens or any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, wth the Commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(1967, c. 1119.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, added the language following "exhibition purposes" in the first sentence of subdivision (1).

As the rest of the section was not affected by the amendment, it is not set out.

§ **113-95. Licenses required.**—No person shall at any time take any wild animals or birds without first having procured a license as provided by this Article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	$22.00
Nonresident six-day hunting license	17.75
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50

One dollar ($1.00) of each nonresident hunting license fee and nonresident six-day hunting license fee shall be used by the North Carolina Wildlife Resources Commission for the propagation, management, and control of migratory waterfowl in North Carolina and a like portion of such license fees shall be contributed by the North Carolina Wildlife Resources Commission to a proper agency or agencies in the United States; said sum to be spent in Canada for the propagation, management, and control of migratory waterfowl.

Any applicant who is a resident of this State shall pay to the authorized license issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, as his fee for issuing each license, the sum of twenty-five cents (25¢) for each license costing less than five dollars ($5.00) and the sum of fifty cents (50¢) for each license costing five dollars ($5.00) or more. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. Any person who shall have resided in this State for a period of at least six months or shall have maintained his domicile in this State for a period of at least 60 days immediately preceding the making of application shall be deemed a resident for the purposes of this Article, provided that when resort must be had to the circumstances of domicile rather than to the mere fact of residence, such person shall sign a certificate of domicile on a form supplied by the Wildlife Resources Commission stating the necessary facts and intent to constitute legal domicile within this State for the required period of time. A nonresident of this State shall obtain a nonresident hunting license which shall entitle him to hunt during the entire season, or such nonresident may obtain a nonresident six-day hunting license which shall entitle him to hunt during six consecutive days during the open season. The combination hunting and fishing license may be obtained only by a resident of this State and shall authorize him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars ($10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands and in the county where the deed to such lands is registered by payment of a license fee of five dollars ($5.00) plus fifty cents (50¢) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commissioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty 100 acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of six dollars ($6.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Commissioner, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license.

Any resident of this State who has attained the age of 65 years may, upon making application, including satisfactory proof of age, to the license section of the Wildlife Resources Commission at its headquarters in Raleigh, and upon payment of a fee of ten dollars ($10.00), receive from the Commission a nontransferable combination hunting and fishing license which shall be valid for the life of such person. Such license shall not relieve the holder thereof from the purchase of any additional license or permit which may be required for hunting big game, fishing for mountain trout, hunting and fishing on public wildlife management areas, or using special devices for fishing inland waters. Provided, however, that such lifetime combination hunting and fishing license shall be issued without charge to any such resident applicant who has attained the age of 70 years.

The certificate of domicile required in the third paragraph of this section to be supplied by the Wildlife Resources Commission shall as near as practicable be in form and contents as follows:

North Carolina Wildlife Resources Commission
Raleigh, North Carolina

State of North Carolina } Certificate of Domicile
County of .... }

I, ..., do hereby represent and certify
(name of applicant)
to the North Carolina Wildlife Resources Commission that on the .... day of ...., 19...., I established my bona fide residence and abode at ...., ...,
(street or R.F.D. No.) (city or town)
North Carolina; and I do hereby further represent and certify that at the time of establishment of such residence or abode and at all times since my intention was, has been, and still is to maintain such abode, or some other abode located within the State of North Carolina, as my principal place of residence either permanently or indefinitely.

Witness my hand this, the .... day of ...., 19.....

....
(Signature of applicant)

Witness:

....

(1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1968, increased the nonresident license fees by two dollars each and inserted the paragraph immediately following the fee schedule.

The first 1969 amendment, effective Aug. 1, 1969, added the next-to-last paragraph.

The second 1969 amendment revised the schedule of fees in the first paragraph, rewrote the second sentence of the third paragraph, substituted the present fifth and sixth sentences of the third paragraph for the former fifth, sixth and seventh sentences of that paragraph, inserted "and in the county where the deed to such lands is registered" in the second proviso in the fourth paragraph, and increased the fees in that proviso and in the sixth paragraph.

The first 1971 amendment rewrote the last sentence of the seventh paragraph.

The second 1971 amendment substituted "hunting license fee" for "hunting permit fee" and inserted "in the United States; said sum to be spent" in the second paragraph.

The third 1971 amendment, effective July 1, 1971, rewrote the fourth sentence of the third paragraph and added the last paragraph, containing the form for the certificate of domicile.

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

Session Laws 1971, c. 282, s. 2, provides: "Payments made under the provisions of G.S. 113-95 to an agency within the United States since August 1, 1968, are hereby ratified and approved."

§ 113-95.2. Special big game hunting license.—In addition to such hunting licenses as are required by G.S. 113-95, no one may hunt any species of big game without first having procured a special big game hunting license which shall be issued only upon payment of a license fee in the sum of one dollar and fifty cents ($1.50) plus twenty-five cents (25¢) for the issuing agent. For the purpose of this section "big game" is defined as deer, bear, wild boar and wild turkey. (1969, c. 1042, s. 7.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-95.3. Licenses for disabled veterans.—All 100% disabled war veterans as determined by the Veterans Administration shall be issued a lifetime license for hunting, fishing and trapping as provided in this chapter, upon payment of one annual license fee. (1969, c. 1042, s. 13.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ 113-96. Trappers' licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of three dollars ($3.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner of Game and Inland Fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of four dollars ($4.00) as a license fee and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars ($25.00) as a license fee, and the sum of fifty cents (50¢) as a fee to the officer or person, other than the Commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Commissioner, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The Board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3; 1969, c. 1042, s. 6.)

Editor's Note. — The 1969 amendment increased the fees in the first and second sentences.

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ **113-96.1. Schedule of licenses.**—The several hunting and trapping licenses required by the preceding G.S. 113-95, G.S. 113-95.2, and G.S. 113-96 are summarized and tabulated as follows:

Nonresident hunting license	$22.00
Nonresident six-day hunting license	17.75
Nonresident landowner's county hunting license	5.50
Resident State hunting license	5.50
Resident combination hunting and fishing license	7.50
Resident county hunting license	2.50
Controlled shooting preserve license	6.50
Special big game hunting license	1.75
Nonresident trapping license	25.50
Resident State trapping license	4.25
Resident county trapping license	3.25

(1969, c. 1042, s. 8.)

Editor's Note. — Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

§ **113-98. Exemption.**—Any person who is a resident of this State, and any dependent member of his family under 18 years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this Article, on lands owned by such resident without a license; and a minor member of a family resident of this State, under 16 years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a nonresident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such nonresident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14; 1971, c. 1231, s. 1.)

Editor's Note. — The 1971 amendment substituted "18" for "twenty-one."

§ 113-100. Open season.

Local Modification.—Beaufort: 1969, c. 265; 1971, c. 129; Duplin: 1969, c. 258; Gates: 1969, c. 121; Jackson: 1969, c. 1259; Pender: 1969, c. 258; Transylvania: 1969, c. 1259.

§ 113-102. Protected and unprotected game.

(b) Unprotected Birds: English sparrows, crows, jays, blackbirds, starlings and buzzards and their nests and eggs.

(c) Unprotected Animals: Weasels and skunks; provided that unprotected birds and animals may not be killed by the use of poison or dynamite except under permit issued by the Executive Director of the North Carolina Wildlife Resources Commission.

(d) No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale. Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. It shall be unlawful to take or possess American alligators or their eggs at any time, except that any bona fide zoo, either public or private, may, under a permit issued by the Executive Director of the Wildlife Resources Commission, possess such alligators and eggs for purposes of display and/or propagation. It shall be unlawful to take North American panthers (cougars) at any time. (1935, c. 486, s. 18; 1949, c. 1205, s. 2; 1965, c. 904, s. 1; 1967, c. 728, s. 1; 1971, c. 449, s. 1; c. 461; c. 648, s. 1.)

Local Modification.—Washington, as to subsection (c): 1971, c. 174.

Editor's Note.—

The 1967 amendment deleted from subsection (b) "great horned owls, Cooper's hawks, sharp-shinned hawks."

The first 1971 amendment deleted "Wildcats" preceding "Weasels" and substituted "Executive Director of the North Carolina Wildlife Resources Commission" for "Commissioner" in subsection (c).

The second 1971 amendment added the last sentence in subsection (d).

The third 1971 amendment rewrote the next-to-last sentence in subsection (d).

Section 2, Session Laws 1967, c. 728, provides: "This act shall not be construed to prevent the killing of owls or hawks when they are committing depredations, as authorized by G.S. 113-97 [113-87]."

Session Laws 1969, c. 129, effective Sept. 1, 1969, repealed Session Laws 1951, c. 450, as amended by Session Laws 1957, c. 34.

Session Laws 1969, c. 195, effective Oct. 1, 1969, also repealed Session Laws 1951, c. 450.

Section 2, c. 449, Session Laws 1971, provides: "The intent of this act is to classify the wildcat (Lynx rufus rufus) as a protected wild animal. To that end, all general, special, and local legislation in conflict with this act, including any act that may set any bounty upon wildcats (Lynx rufus rufus), is hereby repealed."

Section 2, c. 648, Session Laws 1971, provides: "All laws and clauses of laws, including section 1½ of Chapter 904 of the Session Laws of 1965, which are in conflict with this act are hereby repealed."

As subsection (a) was not affected by the amendments, it is not set out.

§ 113-103.1. Deer accidentally killed.—Notwithstanding any regulation of the Wildlife Resources Commission, any person who shall accidentally kill a deer with an automobile or other motor vehicle need not report such accident to the Wildlife Resources Commission nor shall said person have to surrender the carcass of the dead deer to any public agency or public official. Provided that any person desiring to keep the carcass of an accidentally killed deer must obtain a permit from a wildlife protector or other law-enforcement officer. (1971, c. 400, s. 1.)

Editor's Note.—Section 2, c. 400, Session Laws 1971, makes the act effective July 1, 1971.

§ 113-104. Manner of taking game.—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this Article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this Article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this Article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this Article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number 10 gauge, a rifle, or with bow having minimum pull of 45 pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven eighths of an inch, unless otherwise specifically permitted by this Article: Provided, however, blunt-type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants; provided that pistols with barrels not less than six inches in length and a muzzle velocity of not under 1100 feet per second and bullet weight of not less than 35 grains or more than 70 grains may be used in the hunting or taking of squirrels or rabbits on one's own land or on land in one's legal possession, or on lands of another where expressed permission has been granted therefor. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine-powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations when hunting raccoons or opossums with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this Article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun or rifle be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

No person shall take any wild animal or wild bird at night with the aid of an artificial light if such taking is from any aircraft, vehicle, watercraft, or other conveyance; provided however that this section does not prohibit the collection of specimens for scientific and medical studies when conducted under permit issued by the North Carolina Wildlife Commission.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters, their guns, dogs, or other hunting equipment or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the counties of Beaufort, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. With respect to the Roanoke River and its tributaries in Northampton and Bertie Counties, but not to any of its tributaries in Halifax and Edgecombe Counties, between the Roanoke River's intersection with U.S. Highway 301 at Weldon in Northampton County and its intersection with U.S. Highway 17 at Williamston in Bertie County, this paragraph shall apply; provided, however, this paragraph shall not apply to any other river or stream in Northampton, Bertie, Edgecombe and Halifax Counties. For the purposes of this section, no portion of the Roanoke River shall be deemed to lie in Martin County. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, cc. 75, 140; 1971, c. 439, ss. 1-3; c. 899, s. 1.)

Local Modification.—Beaufort: 1969, c. 265; 1971, c. 129; Duplin: 1969, cc. 195, 258; Franklin: 1969, c. 484; Pender: 1969, cc. 129, 258; Stanly: 1969, c. 858; Tyrrell: 1969, c. 757.

Editor's Note.—

The first 1967 amendment inserted in the first paragraph the proviso as to use of pistols for taking squirrels or rabbits. Section 2 of the 1967 amendatory act provides that the act shall apply to the following counties only: Alexander, Buncombe. Caldwell. Cherokee, Clay, Cleveland, Graham, Haywood, Macon, Madison, Mitchell, Polk, Rutherford, Transylvania and Yancey.

The second 1967 amendment inserted "and firearms except where prohibited by the North Carolina Wildlife Resources Commission regulations" in the fourth sentence.

The first 1969 amendment inserted "or rifle" in the proviso to the sixth sentence of the first paragraph.

The second 1969 amendment inserted the present second paragraph.

The first 1971 amendment, in the last paragraph, inserted "their guns, dogs, or other hunting equipment" in the first sentence, deleted "Bertie" and "Northampton" from the list of counties in the second sentence, and added the third and fourth sentences.

The second 1971 amendment deleted "Sampson" from the list of counties in the second sentence of the last paragraph.

Warrant Sufficient.—Warrants charging that defendants unlawfully and willfully attempted to take deer with the aid of an artificial light between the hours of sunset and sunrise in an area known to be inhabited and frequented by deer, is sufficient to charge the offense defined by this section; the words "in an area known to be inhabited and frequented by deer" are mere surplusage and may be disregarded. State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

In a prosecution charging defendants with the unlawful hunting of deer by artificial light, it was incumbent upon the defendants to ask for a bill of particulars if they desired to know what area of the county the offense took place. State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

Applied in State v. Vaughan, 268 N.C. 105, 150 S.E.2d 31 (1966).

§ 113-105. License to engage in business of game propagation; sale and transportation regulated. — Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section, may make application in writing to the Commissioner for a license to do so. The Commissioner, when it shall appear that such application is made in good faith, shall upon the payment of a fee of two dollars ($2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except wild quail and wild turkey in any manner and at any time and sell the carcasses for food as hereinafter prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the Board; and, provided further, that propagated migratory game birds may be killed by shooting only during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the Commissioner shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the Commissioner at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird before attaining the age of four weeks, shall have had removed from the web of one foot a portion thereof in the form of a "V" large enough to make a well-defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the Board.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such progagated game birds are to be transported and number of each kind contained therein. The Board shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents (5¢). The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boardinghouse, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or cafe, boardinghouse or club, desiring to serve game to his patrons, may make application to the Department of Conservation and Development for a license to do so. The Department, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars ($10.00) issue to each such applicant a license permitting the holder thereof to buy and possess game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the Department at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the Department not later than January fifteenth. The Department shall furnish the forms on which these records are to be kept. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this Article. (1935, c. 486, s. 21; 1971, c. 515, s. 5.)

Editor's Note. — The 1971 amendment substituted "wild quail" for "quail" in the second sentence.

§ 113-105.2. Pen-raised quail.—(a) The Commission shall on or before October 1, 1971, promulgate rules and regulations for the possession, sale, and transportation of pen-raised quail for food purposes, and in adopting such rules and regulations the Commission shall provide for adequate safeguards against the trapping of wild quail; and to provide for close supervision of any person, firm or corporation raising pen-raised quail for food purposes and to take every reasonable precaution so as to adequately distinguish such pen-raised quail from wild quail.

(b) When any person, firm, or corporation applies in writing to the Executive Director, the Executive Director, when it shall appear that such application and applicant have complied with the rules and regulations promulgated by the Commission, shall issue a revokable permit to sell pen-raised quail for food purposes.

(b1) Every person who wishes to raise and sell pen-raised quail for food purposes, upon application for the permit described in subsection (b) shall pay the sum of fifty dollars ($50.00) to the Wildlife Resources Commission, to be used by the Commission to defray the expenses incurred in the processing of the application.

(c) The Executive Director shall without notice have the right to revoke any permit issued under this section for failure to comply with any rule or regulation of the Commission. Upon revocation of any permit, the permittee shall have the right to appeal any revocation to the Commission.

(d) If any person, firm, corporation, permittee, processor, or merchant shall violate any of the rules and regulations promulgated by the Commission, they shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred fifty dollars ($150.00), or by imprisonment not exceeding 30 days or both. (1971, c. 515, ss. 1-4; c. 1114.)

Editor's Note. — The 1971 amendment added subsection (b1).

§ 113-109. Punishment for violation of Article.

(b) Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this Article shall, upon conviction, be fined for a first offense not more than two hundred fifty dollars ($250.00) or imprisoned for not more than 60 days or both in the discretion of the court, and for subsequent offenses shall, upon conviction, be fined not less than two hundred fifty dollars

($250.00) or imprisoned not more than 90 days or both in the discretion of the court. In any locality or area which is frequented or inhabited by wild deer, the flashing or display of any artificial light from roadway or public or private driveway so that the beam thereof is visible for a distance of as much as 50 feet from such roadway or driveway, or the flashing or display of artificial light at any place off such roadway or driveway, when either of such acts is accompanied by the possession of a firearm or a bow and arrow during the hours between sunset and sunrise, except as authorized herein for the taking of raccoon, opossums, or frogs, shall constitute prima facie evidence of a violation punishable under the provisions of the preceding sentence.

(d) Any person who shall take or attempt to take wild turkey or bear during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey or bear during the open season as established by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than two hundred and fifty dollars ($250.00) or imprisoned for not less than 90 days, or both in the discretion of the court.

(e) Any person who shall take or kill or attempt to take or kill any deer from any boat or other floating device in violation of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or imprisoned for not less than 30 days nor more than 60 days, in the discretion of the court. This subsection shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin.

(1967, c. 729; c. 1149, s. 1; 1971, c. 423, s. 1; c. 524; c. 899, s. 2.)

Editor's Note.—

The first 1967 amendment increased the minimum fine in subsection (d) from $100.00 to $250.00.

The second 1967 amendment rewrote the second sentence in subsection (b).

The first 1971 amendment inserted "or bear" twice in subsection (d).

The second 1971 amendment rewrote the penalty provisions in the first sentence of subsection (b) and deleted "such" preceding "artificial light" and inserted "except as authorized herein for the taking of raccoon, opossums, or frogs," in the second sentence of subsection (b).

The third 1971 amendment deleted "Sampson" from the list of counties in the last sentence of subsection (e).

Only the subsections affected by the amendments are set out.

Applied in State v. Vaughan, 268 N.C. 105, 150 S.E.2d 31 (1966); State v. Lassiter, 9 N.C. App. 255, 175 S.E.2d 689 (1970).

ARTICLE 8.

Fox Hunting Regulations.

§ 113-111. No closed season in certain counties.—It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Nash, Perquimans, Pitt, Rockingham, Rowan, Stanly, Stokes, Tyrrell, Union, Watauga, Wilkes, and Yadkin Counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522; 1967, cc. 642, 922; 1971, c. 169, s. 1; c. 385, s. 1.)

Local Modification.—By virtue of Session Laws 1967, c. 642, Warren should be stricken from the replacement volume.

Editor's Note.—

Session Laws 1967, c. 642, repealed Session Laws 1957, c. 742, which inserted

Franklin in the list of counties in this section. The 1967 act provides that it is the intent and purpose of the act that the general laws of the State relating to fox hunting shall be applicable to Franklin County

Session Laws 1967, c. 922, deleted "Martin" from the list of counties.

Session Laws 1971, c. 169, s. 1, inserted Stanly in the list of counties.

Session Laws 1971, c. 385, s. 1, inserted "Wilkes" in the list of counties in this section.

Session Laws 1971, c. 169, s. 2, provides: "Notwithstanding the provisions of § 113-111, it shall be unlawful to hunt foxes in Stanly County by the use of electronic calling devices."

Session Laws 1971, c. 169, s. 3, provides: "Chapter 253 of the Public-Local Laws of 1937 and all other local laws regarding Stanly County in conflict with this act are hereby repealed."

Session Laws 1971, c. 385, s. 2, provides: "Notwithstanding the provisions of G.S. 113-111, it shall be unlawful to hunt foxes in Wilkes County by the use of electronic calling devices."

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.

Local Modification. — Avery, Mitchell and Watauga: 1967, c. 644.

Prohibited Activities.—This section prohibits hunting, fishing or trapping on properly posted lands or waters without the written consent of the owner or his agent, provided that in designated counties, including Halifax County, no arrest may be made for such violation without consent of the owner or his agent. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Term "Owner" Does Not Include Lessee.—In a prosecution in Halifax County under this section for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the private club is the lessee of the land under and around the lake upon which defendants were fishing, a lessee not being included within the term "owner" as used in § 113-130, and there being no showing that defendants were fishing without the written consent of the actual owner, or that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under this section, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.2. Regulations as to posting of property.

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in this section. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.—Any person who shall mutilate, destroy or take down any "posted," "no hunting" or similar notice, sign or poster on the lands, waters, or legally established waterfowl blind of another, or who shall post such sign or poster on the lands, waters or legally established waterfowl blind of another, without the consent of the owner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100.00). (1949, c. 887, s. 3; 1953, c. 1226; 1969, c. 51.)

Editor's Note.—The 1969 amendment substituted "one hundred dollars ($100.00)" for "fifteen dollars ($15.00)" at the end of the section.

ARTICLE 11.

Miscellaneous Provisions.

§ 113-126.1. Killing bear out of season.—Notwithstanding any other provisions of law, it shall be unlawful to take, trap, kill, or attempt to take, trap or kill bears in North Carolina except during the open seasons therefor as established by regulations of the Wildlife Resources Commission; provided, that when bears are found in the act of destroying, or attempting to destroy, real or personal property, such property owners may take such action as appears reasonable and necessary, including killing the bear, to protect their real or personal property. When a bear is killed out of season by a property owner while such bear is destroying or attempting to destroy real or personal property, a Wildlife Resources Commission representative shall be notified within 12 hours of said killing by the person killing the bear and the carcass of such bear shall be disposed of by gift to some recognized charitable institution located in the county where the bear was killed; provided further, that nothing contained in this Subchapter shall be construed to authorize the hunting of bear with dogs during the closed season thereon.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars ($100.00) or imprisoned for not more than 60 days, or both fined and imprisoned, in the discretion of the court. (1967, c. 953; 1971, c. 423, s. 3; c. 809, s. 2.)

Editor's Note.—Session Laws 1971, c. 423, s. 3, as amended by Session Laws 1971, c. 809, s. 2, rewrote the proviso to the second sentence of the first paragraph.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

ARTICLE 12.

General Definitions.

§ 113-129. Definitions relating to resources.

Whether a body of water is a "private pond" is not relevant to a prosecution for trespass under § 113-120.1, there being no requirement that a pond must be a "private pond" in order to post the notices and signs described in § 113-120.2. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

§ 113-130. Definitions relating to activities of public.—The following definitions apply to activities of the public in regard to marine and estuarine and wildlife resources:

Individual: A human being.

Owner; Ownership: As for personal property refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.

Person: Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.

Resident: In the case of individuals, one who, at the time in question, has resided in North Carolina for the preceding six months or has been domiciled in North Carolina for the preceding 60 days, provided that when resort must be had to the circumstances of domicile rather than the mere fact of residence, such individual shall sign a certificate on a form supplied by the Commission stating the necessary facts and intent to constitute legal domicile within the State for the preceding 60 days. In the case of corporations, a corporation which is chartered under the laws of North Carolina and has its principal office within the State.

To Fish: To take fish.

To Sell; Sale: Includes a sale or exchange of property, or an offer or attempt to sell or exchange—for money or any other valuable consideration.

To Take: All operations during, preparatory, and subsequent to an attempt—

whether successful or not—to capture, kill, pursue, or otherwise harm or reduce to possession any fisheries resources.

Vessel: Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2; 1971, c. 705, s. 3.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote the definition of "resident."

Term "Owner" Does Not Include Lessee. —In a prosecution in Halifax County under § 113-120.1 for a trespass by fishing on properly posted lands and waters of a private club without the written consent of the owner or his agent, defendants' motion for nonsuit should be allowed where the State's evidence discloses that the private club is the lessee of the land under and around the lake upon which defendants were fishing, a lessee not being included within the term "owner" as used in this section, and there being no showing that defendants were fishing without the written consent of the actual owner, or that the owner consented to their arrest, or that the private club was the agent of the owner for these purposes. State v. Manning, 3 N.C. App. 451, 165 S.E.2d 13 (1969).

ARTICLE 13.

Jurisdiction of Fisheries Agencies.

§ **113-139. Search warrants.**—(a) Inspectors and protectors are authorized to obtain and execute search warrants within the limitations of this section from any official authorized to issue search warrants in accordance with the procedure in article 4 of chapter 15 of the General Statutes.

(b) Search warrants which inspectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Department is granted exclusive or primary jurisdiction in this subchapter.

(c) Search warrants which protectors may execute must be for evidence, fruits, or instrumentalities of some criminal offense as to which the Commission is granted exclusive or primary jurisdiction in this chapter or elsewhere, including chapters 75A and 143. (1969, c. 347.)

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ **113-152. Licensing of vessels; fees.**—(a) The following vessels are subject to the licensing requirements of this section:

(1) All vessels engaged in commercial fishing operations in coastal fishing waters and

(2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

"Commercial fishing operations" are all operations preparatory to, during, and subsequent to the taking of fish:

(1) With the use of commercial fishing equipment or

(2) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of regulations made under the authority of this article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this article or of regulations made under the authority of the article, or without making reasonably certain that all persons on board are in compliance with the provisions of this article and regulations made under the authority of this article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this article or of regulations made under the authority of this article.

Nothing contained in this section shall require the licensing of any vessel used solely for clamming or oystering by a person not required to have a clam and oyster license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(c) Licenses are issued annually upon a calendar-year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

(1) Vessels without motors, one dollar ($1.00).
(2) Vessels with motors not over eighteen feet in length, three dollars ($3.00).
(3) Vessels with motors over eighteen feet but not over twenty-six feet in length, fifty cents (50¢) per foot.
(4) Vessels with motors over twenty-six feet in length, seventy-five cents (75¢) per foot.
(5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(f) No persons exempt from the oyster and clam licenses under the provisions of this section may take more than one bushel of oysters and clams in the aggregate on any one day. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2; 1967, c. 444, ss. 1, 2; 1969, c. 1243.)

Editor's Note. — The 1967 amendment added the last paragraph of subsection (a) and added subsection (f).

The 1969 amendment inserted the matter in parentheses in the opening paragraph of subsection (c) and inserted "shall be taxed, based on tonnage" in subdivision (5) of subsection (c).

As the rest of the section was not changed by the amendments, only subsections (a), (c) and (f) are set out.

§ 113-154. Oyster and clam licenses.

(b) It is unlawful for any individual to take oysters or clams for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(1967, c. 444, s. 3.)

Editor's Note.—The 1967 amendment inserted "for commercial use" near the beginning of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 113-156. Licenses for fish dealers.

(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Commissioner that his residence, or some other office or address, within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a calendar-year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Commissioner, that the license applicant is a resident of North Carolina. (1969, c. 1244.)

Editor's Note. — The 1969 amendment added the last sentence of subsection (d). As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 113-157. Taxes on seafood.

(d) The following taxes are applicable to the seafood named below:

(1) Oysters, eight cents (8¢) per bushel.
(2) Clams, six cents (6¢) per bushel.
(3) Scallops, five cents (5¢) per gallon.
(4) Soft crabs, two cents (2¢) per dozen.
(5) Hard crabs, ten cents (10¢) per one hundred pounds.
(6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.
(7) Shrimp, green, heads on, ten cents (10¢) per one hundred pounds.

(1969, c. 1275.)

Editor's Note. — The 1969 amendment added subdivision (7) of subsection (d) and deleted the former last sentence of subsection (d), which provided an additional tax on oysters taken in North Carolina and shipped in the shell outside the State. As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-189. Protection of sea turtles and porpoises. — (a) It shall be unlawful willfully to take, disturb or destroy any sea turtles including, but not limited to, green, hawksbill, loggerhead, and leatherback turtles, or their nests or eggs at any time during the months of May, June, July, August and September of each year.

(b) It shall be unlawful willfully to harm or destroy porpoises. (1967, cc. 198, 1225.)

Editor's Note. — Chapter 1225, Session Laws 1967, designated the former provisions of the section as subsection (a) and added subsection (b).

ARTICLE 16.

Cultivation of Oysters and Clams.

§ 113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.—(a) In order to encourage oyster and clam culture in North Carolina, the Board, upon the recommendation of the Commissioner, may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this Article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(b) The area leased may not be less than one acre nor more than 50 acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than 200 acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shoreline.

(c) No person may lease more than a total of 50 acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of 200 acres within the State.

(d) Any person desiring to apply for a lease must make written application to the Commissioner on forms prepared by him containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. Except in the case of renewal leases, the application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Commissioner concerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Commissioner deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial lease applications, must order an investigation of the bottom proposed to be leased. The investigation is to be made by the Commis missioner or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or the greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Commissioner in his discretion may either recommend that the lease be denied or that it be amended so as to exclude such bed. In the event the Commissioner authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars ($25.00).

(e) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(f) Upon determination by the Commissioner that the results of the investigation, if required, are satisfactory and that the application for lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Commissioner must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Commissioner recommends approval or a modification to which the applicant agrees, the Commissioner must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than 30 days the meeting of the Board at which the granting of the lease or renewal of lease is to be made; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Board is slated to act upon the application for lease or renewal of lease.

(g) Protests to the granting of the proposed lease may be filed with the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars ($25.00). The Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Board postpone consideration of the lease to a subsequent meeting. The Commissioner as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina, except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars ($25.00) deposited with the protest must be forfeited to the use of the Department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollars ($25.00) deposit must be returned to the person protesting.

(h) The Board in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Commissioner must present all lease applications to the Board as to which he has published a notice of intention to lease more than 30 days prior to the meeting of the Board. In the event there was a protest that did not prevail before the Commissioner as to any lease recommended by him, the Commissioner must notify the Board of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or in part, it may order the Commissioner to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Board meeting or such other time as it may direct.

(i) After a lease is granted by the Board and the Director is satisfied that the survey submitted meets the criteria and that all fees and rent due in advance have been paid, the Director must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Board in order to define the bounds of the leased area. The Commissioner shall have authority, in his discretion, with the approval of the lessee, to amend an existing lease by reducing the area under lease or by combining existing contiguous leases.

(j) Initial leases begin upon the issuance of the lease by the Director and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of 10 years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar ($1.00) per acre for all leases entered into before July 1, 1965, and for all other leases until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the beginning for renewals of leases entered into after said date, the rental is five dollars ($5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(k) Except as restricted by this Subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within 15 days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate proceedings to terminate the lease.

(l) Upon receipt of notice by the Commissioner of any of the following occurrences, he must commence action to terminate the leasehold:

(1) Failure to pay the annual rent in advance.

(2) Failure to file information required by the Commissioner upon annual remittance of rental.

(3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.

(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Board.

(5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.

(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

(7) Substantial breach of compliance with the provisions of this Article or of regulations of the Board governing use of the leasehold.

The Board is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested. Provided, however, that if a lessee has made a diligent effort to effectively and efficiently manage his lease according to accepted standards and practices in such management, and because of reasons beyond his control, such as acts of God, such lessee has not and cannot meet the requirements set out by the Board under the provisions of this paragraph of this subsection, his leasehold shall not be terminated under subdivision (5) of this subsection.

(m) After receipt of notice of any occurrence listed in subsection (1), the Commissioner must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Commissioner is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Commissioner may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where there is no appeal, or where an appeal does not prevail, the Director must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt The final notice of termination may not be issued pending hearing of any appeal by the Director or by the Board.

(n) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Commissioner are required as soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(o) Every year between January 1 and February 15 the Commissioner must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(p) All leases and renewal leases granted after the effective date of this Article are made subject to this Article and to reasonable amendment of governing statutes, regulations of the Board, and requirements imposed by the Commissioner or his agents in regulating the use of the leasehold or in processing applications of rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Board. No increase in rentals, however, may be given retroactive effect.

The General Assembly declares it to be contrary to public policy to the oyster and clam bottoms which were leased prior to January 1, 1966, and which are not being used to produce oysters and clams in commercial quantities to continue to be held by private individuals, thus depriving the public of a resource which belongs to all the people of the State. Therefore, when the Commissioner determines, after due notice to the lessee, and after opportunity for the lessee to be heard, that oysters or clams are not being produced in commercial quantities, due to the lessee's failure to make diligent effort to produce oysters and clams in commercial quantities, the Commissioner may decline to renew, at the end of the current term, any oyster or clam bottom lease which was executed prior to January 1, 1966. The lessee may appeal the denial of the Commissioner to renew the lease to the Board in which event the lessee shall be granted an opportunity to be heard, de novo, by the Board and the burden of proof, by the greater weight of the evidence, shall be on the lessee. The Board, by majority vote, may affirm or reverse the action of the Commissioner. No appeal shall be allowed from the action of the Board.

(q) If the State Board of Health closes any creek, stream, river, bay, or sound area to oystering or clamming by reason of pollution, the Commissioner of Commercial and Sports Fisheries is authorized to refund the rental fee paid by any lessee who holds an oyster or clam lease from the State of North Carolina and whose private garden is closed by reason of the said pollution through no fault of the said lessee. Such refund shall be apportioned and only that portion equivalent to the fraction of year that the oyster garden was closed to oystering and clamming will be refunded. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2; 1967, c. 24, s. 16; c. 88; c. 876, s. 1; 1971, c. 447.)

Local Modification.—Brunswick: 1967, c. 876, s. 2.

Editor's Note.—

Former § 113-202, as last amended by Session Laws 1967, c. 24, s. 16, was repealed by Session Laws 1967, c. 88. Present § 113-202, covering the same subject matter was enacted by Session Laws 1967, c. 876, s. 1.

The 1971 amendment, effective July 1, 1971, added subsection (q).

Lease Constitutes Contract That May Not Be Abrogated by Subsequent Statute.—While there is no vested right in the provisions of a statute, where a person has leased the bottom of waters from the State for oyster beds pursuant to former law, the lease constitutes a contract between the lessee and the State, and the State may not by subsequent statute abrogate the terms of the contract, either as to duration and renewals or the amount of rent. Oglesby v. Adams, 268 N.C. 272, 150 S.E.2d 383 (1966).

§ 113-203. Transplanting of oysters and clams.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from public beds designated by the Board as natural seed oyster areas. Such areas shall be designated as natural seed oyster areas in the following manner:

A petition shall be filed with the Commissioner by the board of county commissioners of the county in which such area is located requesting the designation of and describing the area proposed as a natural seed oyster area. Upon the receipt of the petition, the Commissioner shall, within six weeks of the receipt by him of such petition, cause an investigation of the area proposed to be designated as a natural seed oyster area. Such investigation shall be made by qualified biologists of the Division of Commercial and Sports Fisheries. The Commissioner shall then make a recommendation to the Board as to whether the area described in the petition should be designated as a natural seed oyster area and such area shall be so designated by the Board only after the Commissioner so recommends as being in the best interests of the State.

The Commissioner shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated natural seed oyster areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Board may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2; 1967, c. 878.)

Editor's Note. — The 1967 amendment redesignated former subsection (d) as (e) and added present subsection (d).

As the rest of the section was not changed by the amendment, only subsections (d) and (e) are set out.

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.—(a) Every person claiming title to any part of the bed lying under navigable waters of any coastal county of North Carolina or any right of fishery in navigable waters of any coastal county superior to that of the general public must register the grant, charter, or other authorization under which he claims with the Commissioner. Such registration must be accompanied by a survey of the claimed area, meeting criteria established by the Commissioner for surveys of oyster and clam leases. All rights and titles not registered in accordance with this section on or before January 1, 1970, are hereby declared null and void. The Commissioner must give notice of this section at least once each calendar year for three years by publication in a newspaper, or newspapers of general circulation throughout all coastal counties of the State. For the purpose of this subsection, "coastal county" shall mean all of the following counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The provisions of this section shall not apply to the land lying under any private fish pond or irrigation pond.

(1971, c. 346, s. 1.)

Editor's Note.—The 1971 amendment inserted "of any coastal county" in two places in the first sentence and added the fourth and fifth sentences of subsection (a).

Session Laws 1971, c. 346, ss. 2 and 3 provide:

"Sec. 2. It is the purpose of this act to make it clear that the 1965 enactment of G.S. 113-205 does not apply to all navigable waters within the State, but only those waters in coastal counties that are navigable in law.

"Sec. 3. No rights or titles or interests in any lands or beds lying under navigable waters shall be deemed to have been lost or declared null and void for failure to comply with G.S. 113-205(a), as originally enacted, with respect to any lands or beds under navigable waters not included within the scope of G.S. 113-205(a), as amended by this act."

As subsection (b) was not changed by the amendment, it is not set out.

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.

(d) In the interest of conservation of the marine and estuarine resources of

North Carolina, the Board may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Commissioner. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The Board may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Board may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Board in such actions may be represented by the Attorney General. In determining the availability of funds to the Board to underwrite the costs of litigation or make condemnation payments, the use which the Board proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) To the extent that any application of the provisions of § 113-205 and this section is deemed to constitute a taking of private property, any claimant may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 31 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims brought under the authority of this subsection is three rather than two years and the measure of damages is for any condemnation effected rather than for any tort. Where the claiming party asserts damage from the voiding of a grant or right under § 113-205 (a) and further asserts his minority or other disability subsequent to January 1, 1970, the claimant is granted a period of three years after attaining majority or after removal of the disability in which to prosecute the claim before the Industrial Commission. No claims whatever may be entertained by the Industrial Commission, however, after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1965, c. 957, s. 2; 1969, c. 44, s. 69; c. 541, s. 11.)

Editor's Note.—The first 1969 amendment substituted "appellate division" for "Supreme Court" in the sixth sentence of subsection (d).

The second 1969 amendment substituted "article 31" for "article 3" in the second sentence of subsection (e).

As the rest of the section was not changed by the amendments, only subsections (d) and (e) are set out.

Article 17.

Administrative Provisions; Regulatory Authority of Board and Department.

§ **113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.**—(a) Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes, the party or parties desiring to do such shall first obtain a permit from the North Carolina Department of Conservation and Development. Granting of a State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The North Carolina Department of Water and Air Resources shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question, (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(d) The applicant shall cause to be served in the manner provided by paragraph (g)(9) of this section upon an owner of each tract of riparian property adjoining that of the applicant a copy of the application filed with the State of North Carolina and each such adjacent riparian owner shall have thirty days from the date of such service to file with the Department of Conservation and Development written objections to the granting of the permit to dredge or fill. An owner may be served by publication, in the manner provided by paragraph (g)(10) of this section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is unknown and cannot with due diligence be ascertained, or there has been a diligent but unsuccessful attempt to serve the owner under paragraph (g)(9) of this section.

(e) Applications for permits shall be circulated by the Department of Conservation and Development among all State agencies and in the discretion of the Director, appropriate federal agencies, having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. The Department shall act upon an application for permit within 90 days after the application is filed and failure to so act shall automatically approve the application.

(f) If any State agency or the applicant raises an objection to the action of the Department of Conservation and Development regarding the permit application within 20 days after said action was taken, the Department shall call a meeting of a Review Board composed of the directors (or their designees) of the following State agencies: The Department of Administration, the Department of Conservation and Development, the Board of Health, the Department of Water and Air Resources, the Wildlife Resources Commission, and any other agency that may be designated by the Governor. The Director of the Department of Conservation and Development, if he does not sit on the review himself, may appoint two designees, one to represent conservation interests and one to represent development interests. The Review Board shall set a date for a hearing not more than 60 days from the date of the departmental action. At said hearing, evidence shall be taken by the Review Board from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the Review Board shall make findings of fact in writing and shall affirm, modify or overrule the action of the Department concerning the permit application. Any State agency or the applicant may appeal from the ruling of the Review Board to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes.

(g) The following provisions, together with any additional provisions not inconsistent herewith which the review board may prescribe, shall be applicable in connection with hearings pursuant to this Article:

(1) All hearings shall be open to the public. The review board, or its authorized agents, shall have the authority to administer oaths.

(2) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the review board or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the review board.

(3) The review board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(4) Subpoenas or subpoenas duces tecum issued by the review board, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the board, application may be made to the superior court of the appropriate county for enforcement thereof.

(5) The burden of proof at any hearing shall be upon the person or agency, as the case may be, at whose instance the hearing is being held.

(6) No decision or order of the review board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(7) Following any hearing, the review board shall afford the parties thereto twenty days to submit proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the board's ruling with respect to each such requested finding of fact and conclusion of law.

(8) The Department and the review board shall give notice to all interested parties of their formal actions taken under this section, including departmental findings upon applications and calling of review board meetings by the Department, and announcement of decisions and setting of hearing dates by the review board.

(9) All notices which are required to be given or to be served by the Department, the review board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department or review board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The review board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices. Within the meaning of this paragraph, a "notice" includes a copy of an application for a permit required to be served on adjoining riparian owners, pursuant to subsection (d) of this section.

(10) For purposes of this section, service by publication shall consist of pub-

lishing a notice of service by publication in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598, and published in a county where any part of the land affected by a proposed project is located or, if no qualified newspaper is published in such county, then in a qualified newspaper published in an adjoining county, or in a county in the same judicial district, once a week for three successive weeks. If the owner's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the owner at or immediately prior to the first publication a copy of the notice of service by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. The notice of service by publication shall (i) designate the department of State government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post-office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this section.

(h) The granting of a permit to dredge or fill shall be deemed conclusive evidence that the applicant has complied with all requisite conditions precedent to the issuance of such permit, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part, except failure to notify adjacent riparian landowners as required by subsection (d) of this section.

(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment of not more than 90 days, or both. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. Notice to cease shall be pursuant to G.S. 113-229(g)(9).

(l) The Director may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the Superior Court in the name of the State upon the relation of the Director, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust, and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and state-owned lakes within the State, and to work to be performed by the State government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina State Board of Health and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through G.S. 130-209. Provided, further, this section shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) "State-owned lakes" include man-made as well as natural lakes.

(2) "Estuarine waters" means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Conservation and Development and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) "Marshland" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt water Cordgrass (*Spartina alterniflora*), Black Needlerush (*Juncus roemerianus*), Glasswort (*Salicornia* spp.), Salt Grass (*Distichlis spicata*), Sea Lavender (*Limonium* spp.), Bulrush (*Scirpus* spp.), Saw Grass (*Cladium jamaicense*), Cat-Tail (*Typha* spp.), Salt-Meadow Grass (*Spartina patens*), and Salt Reed-Grass (*Spartina Cynosuroides*). (1969, c. 791, s. 1; 1971, c. 1159, s. 6.)

Editor's Note. — Session Laws 1969, c. 791, s. 3, makes the act effective Jan. 1, 1970.

The 1971 amendment, in subsection (a) added the second sentence. The amendment in subsection (e) in the first sentence inserted "agencies" and inserted "in the discretion of the Director, appropriate," rewrote the second and third sentences, in the fourth sentence inserted "with respect to the factors enumerated in this subsection," and in the fifth sentence inserted "and failure to so act shall automatically approve the application." The amendment in subsection (f) in the first sentence inserted "the Board of Health" and deleted "the Board of Health" following "Commission," added the second sentence, in the fifth sentence substituted "shall make findings of fact in writing and shall" for "may," and in the sixth sentence inserted "Any State agency or" and deleted "if aggrieved" following "applicant." The amendment in subsection (h) added the language following "part" at the end of the sentence. The amendment in subsection (k) added the language following "misdemeanor" in the first sentence and added the second and third sentences. The amendment in subsection (l) in the first sentence inserted the language beginning "for damages" and ending "public trust, and," deleted "for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper" at the end of the first sentence, and in the second sentence inserted "the" preceding "same." The amendment in subsection (m) in the first sentence inserted "their employees, agents, or contractors" and added the third sentence. The amendment in subsection (n) substituted in subdivision (2) "means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of" for "include all estuarine waters of the State up to," and rewrote subdivision (3).

Session Laws 1971, c. 1159, s. 8, contains a severability clause.

§ **113-230. Orders to control activities in coastal wetlands.**—(a) The Director of the Department of Conservation and Development, with the approval of the Board of Conservation and Development, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term "coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Director reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(b) The Director shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested State agencies and each owner or claimed owner of such wetlands by certified or registered mail at least 21 days prior thereto.

(c) Upon adoption of any such order or any order amending, modifying or repealing the same, the Director shall cause a copy thereof, together with a plan of the lands affected and a list of the owners or claimed owners of such lands, to be recorded in the register of deeds office in the county where the land is located, and shall mail a copy of such order and plan to each owner or claimed owner of such lands affected thereby.

(d) Any person, firm or corporation that violates any order issued under the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six months, or both in the discretion of the court.

(e) The superior court shall have jurisdiction in equity to restrain violations of such orders.

(f) Any person having a recorded interest in or registered claim to land affected by any such order may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, and in case he is adjudged the owner of the subject land, whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Director shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, the Department of Administration, upon the request of the Board of Conservation and Development, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(h) This section shall not repeal the powers, duties and responsibilities of the Department of Conservation and Development under the provisions of G.S. 113-229. (1971, c. 1159, s. 7.)

ARTICLE 18.

Commercial and Sports Fisheries Advisory Board.

§ 113-241. Creation; function, purpose and duties.

State Government Reorganization.—The Commercial and Sports Fisheries Advisory Board was transferred to the Department of Natural and Economic Resources by § 143A-115, enacted by Session Laws 1971, c. 864.

ARTICLE 19.

Marine Fisheries Compact and Commission.

§ 113-252. Atlantic States Marine Fisheries Compact and Commission.

State Government Reorganization.—The administration of the Fisheries Compact was transferred to the Department of Natural and Economic Resources by § 143A-126, enacted by Session Laws 1971, c. 864.

ARTICLE 20.

Miscellaneous Regulatory Provisions Applicable Both to Department and Commission.

§ 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc.—(a) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Department of Water Resources and the State Stream Sanitation Committee.

(b) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Board and the Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(c) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(d) Any master or other person having the management or control of a vessel in the navigable waters of the State who wilfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(e) Any person who wilfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2; 1971, c. 690, s. 4.)

Cross Reference. — As to fishing from bridges, see §§ 136-102.5, 153-9(66), and 160-200(47).

Editor's Note. — The 1971 amendment deleted former subsection (a), relating to fishing from bridges, and relettered former subsections (b) through (f) as (a) through (e).

ARTICLE 21.

Inland Fishing Licenses.

§ 113-271. Hook-and-line licenses in inland fishing waters.

(c) Any person who has been a resident of the State for at least one year and who has been certified by the North Carolina Commission for the Blind or a physician or optometrist as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential shall not be required to have a hook-and-line fishing license to fish in Lake Norman provided such person at the time of fishing in Lake Norman is in attendance at Camp Dogwood.

(d) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

(1) Resident State license, $5.50 ($0.50). This license is valid only for use by an individual resident of the State.

(2) Resident State combination hunting-fishing license, $7.50 ($0.50). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in § 113-95.

(3) Resident county license, $2.50 ($0.25). This license is valid only for use by an individual resident of the State within the county in which he lives.

(4) Resident State daily license, $1.25 ($0.25). This license is valid only for use on a single day by an individual resident of the State.

(5) Nonresident State license, $9.50 ($0.50). This license is valid for use by an individual within the State.

(6) Nonresident State five-day license, $4.25 ($0.25). This license is valid only for use on five consecutive days by an individual within the State.

(7) Nonresident State daily license, $2.25 ($0.25). This license is valid only for use on a single day by an individual within the State. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9.)

Editor's Note.—The first 1969 amendment added present subsection (c) and designated former subsection (c) as (d).

The second 1969 amendment increased the fees in subsection (d).

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

As subsections (a) and (b) were not changed by the amendments, they are not set out.

§ 113-272. Special trout licenses.

(d) The special trout licenses issued by the Commission are as follows:

(1) Resident special trout license, $2.25 ($0.25). This license is valid only for use by an individual resident of the State in public mountain trout waters.

(2) Nonresident special trout license, $4.25 ($0.25). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10.)

Editor's Note. — The 1969 amendment increased the fees in subsection (d).

Session Laws 1969, c. 1042, s. 12, provides: "All provisions of this act relating to hunting and trapping licenses and to the combination hunting and fishing license shall become effective on August 1, 1969; all provisions of this act relating to fishing licenses, other than the combination hunting and fishing license, shall become effective on January 1, 1970."

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 113-276. Members of armed forces deemed residents; exemptions and exceptions.

(c) Any person who owns land, or who leases and uses land primarily for purposes of cultivation, his spouse, and any dependent member of his family who is under 18 years of age and resides with him may fish during the open seasons on such lands without being subject to the fishing license requirements of G.S. 113-271 and G.S. 113-272.

(d) Any individual under 16 years of age is exempt from the fishing license requirements of G.S. 113-271 and 113-272 anywhere in the State.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing license requirements of G.S. 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line.

(1967, cc. 127, 654; 1971, c. 1231, s. 1.)

Editor's Note.—The first 1967 amendment rewrote subsections (c) and (d).

The second 1967 amendment added all that part of subsection (e) following the second sentence.

The 1971 amendment substituted "18" for "21" in subsection (c).

As the rest of the section was not changed by the amendments, only subsections (c), (d) and (e) are set out.

ARTICLE 22.

Regulation of Inland Fisheries.

§ 113-292. Authority of Commission in regulation of inland fishing.

Commission May Prohibit Certain Method of Taking Fish.—The Commission may seek to prohibit by regulation and in the public interest a reprehensible method of taking or attempting to take fish. This they have the authority to do, but only if they use language which specifically defines and describes the act or equipment they seek to prohibit. State v. Martin, 7 N.C. App. 532, 173 S.E.2d 47 (1970).

A regulation of the Commission making it unlawful "to snag fish," with no definition of the term "snag," is void for vagueness and uncertainty. State v. Martin, 7 N.C. App. 532, 173 S.E.2d 47 (1970).

ARTICLE 23A.

Promotion of Coastal Fisheries and Seafood Industry.

§ 113-308. Definitions.—The definitions as given in G.S. 113-128 shall apply to this article, except that the following will additionally apply:

(1) Agency: A group or an association which shall make applications and otherwise act for the fishing and seafood industry or a distinguishable part thereof. (1967, c. 890, s. 1.)

§ 113-309. Declaration of policy.—It is declared to be in the interest of the public welfare of North Carolina that those engaged in "coastal fisheries," as defined in G.S. 113-129, shall be permitted and encouraged to act jointly and cooperatively for the purposes of promoting the common good, welfare, and advancement of their industry. (1967, c. 890, s. 2.)

§ 113-310. Certain activities not to be deemed illegal or in restraint of trade.—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the coastal fisheries or distinguishable part thereof hereinunder certified by the Board shall be deemed or considered illegal or in restraint of trade. (1967, c. 890, s. 3.)

§ 113-311. Referendum and assessment declared to be in public interest.—It is hereby declared to be in the interest of the public that the coastal fisheries or any distinguishable part thereof shall be permitted by referendum to be held among themselves as prescribed by this article, to levy upon themselves an assessment on such respective catches, volume, landings, income, or production for the purposes of promoting the common good, welfare, and advancement of the fishing and seafood industry of North Carolina, in addition to any and all taxes, levies, and licenses in effect on June 22, 1967, or that may be enacted and levied or imposed subsequently. (1967, c. 890, s. 4.)

§ 113-312. Application to Board for authority to conduct referendum.—Any agency fairly representative of any distinguishable part or all of the fishing and seafood industry, may at any time make application in writing or petition to the Board for certification and approval to conduct a referendum among the coastal fisheries or any distinguishable part thereof for the purpose of levying an assessment under the provisions of this article, collecting, and utilizing the proceeds for the purposes stated in such referendum and as set forth in this article (1967, c. 890, s. 5.)

§ 113-313. Action of Board on application.—Upon receiving an application or petition as herein provided, the Board shall at its next regular quarterly meeting consider such application as follows:

(1) The Board shall determine if the agency is in fact fairly representative of the coastal fisheries or distinguishable part thereof making application or petitioning for referendum and record in its minutes its determination.

(2) The Board shall determine if the application or petition is in conformity with the provisions and purposes of this article and record in its minutes its determination.

(3) If the Board determines in the affirmative as to (1) and (2) above, it shall authorize and empower the agency to hold and conduct a referendum on the question of whether or not members of the fishing and seafood industry, or the distinguishable part thereof, making application or petition, shall levy upon themselves an assessment under and subject to the conditions and provisions and for the purpose stated in this article. (1967, c. 890, s. 6.)

§ 113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.—The agency shall fix, determine, and publicly announce such referendum at least 30 days before the date set for such referendum, the date, hours, and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if favorably voted upon, and the general purposes to which said amount so collected shall be applied. Such public notice shall be published at least once 20 days prior to the election in one or more newspapers having general circulation in the area where the vote is to be taken. (1967, c. 890, s. 7.)

§ 113-315. Maximum assessment.—No assessment levied on any commodity under the provisions of this article shall exceed one percent (1%) of the average value of this commodity during the next three years for which published statistics by the State of North Carolina or the federal government are available next preceding the application or petition. (1967, c. 890, s. 8.)

§ 113-315.1. Arrangements for and management of referendum; expenses.—The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the agency duly certified and authorized to conduct the same, and any and all expenses in connection herewith shall be borne by the agency. (1967, c. 890, s. 9.)

§ **113-315.2. Referendum may be by mail ballot or box ballot; who may vote.**—Any referendum conducted under the provisions of this article may be held by mail ballot or by box ballot as may be determined and publicly announced as herein provided by the agency before such referendum is called. A person licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, or anyone who would be subject to paying such assessment should the question be voted in the affirmative, shall be eligible and may vote in such referendum. (1967, c. 890, s. 10.)

§ **113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.**—The duly certified agency shall prepare and distribute in advance of such referendum all necessary ballots for the purpose thereof, and shall under rules and regulations drawn up and promulgated by said agency, arrange for the necessary poll holders or officials for conducting the said referendum; and following said referendum and within 10 days thereafter the duly certified agency shall canvass and publicly declare the result of such referendum; except that in the event a mail ballot is used, a mail ballot shall be posted by registered mail on a prearranged date at least 30 days following announcement of same to each duly licensed voter by the agency, and a return, self-addressed envelope of suitable size and construction for containing the completed ballot with ample postage affixed shall be enclosed along with complete instructions on the voting procedure, these instructions stating that the ballot should be marked by the voter to indicate and show his preference, then inserted into the return envelope, sealed, and posted or returned within 10 days of the date of the original or first posting, and on a predesignated date and hour at least 15 days after the original mailing and at an open and public meeting, the return envelopes described above shall be opened, the ballots counted, tabulated, and the results publicly declared by the agency or its authorized representatives. (1967, c. 890, s. 11.)

§ **113-315.4. Levy and collection of assessment; use of proceeds and other funds.**—If in such referendum called under the provisions of this article two thirds or more of the voters eligible and voting vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum, then such assessment shall be collected annually, or more often as predetermined by the agency, for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules, and regulations as may be determined by the agency prior to the announcement of the referendum and included in the announcement of the referendum; said assessment so collected shall be paid into the treasury of the agency, to be used together with other funds, including donations and grants from individuals, firms, governmental agencies, or corporations, and from other fees, dues, or assessments, for the purpose set out in the referendum. (1967, c. 890, s. 12.)

§ **113-315.5. Alternative method for collection of assessment.**—As an alternate method for the collection of assessments provided for in § 113-310 [§ 113-315.4], upon the request or petition of the agency and action by the Board as prescribed in § 113-313, the Commissioner shall notify, by registered letter, all persons or firms licensed by the Department of Conservation and Development to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Commissioner who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Commissioner or his duly authorized agents. (1967, c. 890, s. 13.)

Editor's Note. — The reference "§ 113-315.4" inserted in brackets following "§ 113-310" is suggested as a correction for the reference in Session Laws 1967, c. 890, s. 13, to s. 3 of that act, codified as § 113-310.

§ **113-315.6. Subsequent referendum where assessment defeated.**— In the event such referendum as herein provided for shall not be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall have full power and authority to call another referendum for the purposes herein set forth at any time after the next succeeding 12 months, on the question of an assessment for three years. (1967, c. 890, s. 14.)

§ **113-315.7. Subsequent referendum where assessment adopted.**— In the event such referendum as herein provided for shall be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall in its discretion have full power and authority to call and conduct during the third year after the latest referendum another referendum for the purpose set forth herein for the next ensuing three years. (1967, c. 890, s. 15.)

§ **113-315.8. Refund of assessment; refusal to pay assessment.**— Any persons or firm hereinunder assessed shall have the right to demand of and receive from the treasurer or disbursing office of the agency a refund of such assessment so collected, provided such demand for refund is made in writing within 30 days from the end of the assessment year which shall be determined by the agency. Should a person or firm hereinunder assessed refuse to pay and does not pay the assessment within 30 days of when it is due and payable, then in such event suit may be brought by the duly certified agency in a court of competent jurisdiction to enforce the collection of the said assessment. (1967, c. 890, s. 16; 1971, c. 642, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the second sentence.

§ **113-315.9. Bond of financial officer; audit.**—Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

The chairman or executive head of such agency shall cause an annual certified audit to be made of the financial records of the agency. Such audit shall include, among other things, total annual compensation of each employee of the agency and detailed expenses incurred and reimbursed for each employee of the agency. The chairman or executive head of such agency shall cause a copy of the certified audit to be submitted to the Department of Conservation and Development within 60 days of the end of the agency's fiscal year for transmittal to the Board of Conservation and Development and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made within 60 days of the end of the agency's fiscal year. If the chairman or executive head of the agency shall fail to carry out the provisions of this paragraph, he shall be guilty of a misdemeanor. (1967, c. 890, s. 17; 1971, c. 642, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote the second paragraph.

Article 24.

Miscellaneous Transitional Provisions.

§ 113-322. Certain river designated as commercial fishing waters.—Notwithstanding any other provision of this chapter, or any rule, regulation, or administrative decision of Commission, the following described areas are hereby made and designated commercial fishing waters:

White Oak River, from the point where Stella Bridge crosses said river, to Grants Creek. (1967, c. 1114.)

Cross Reference.—For provision that all references in statutes, etc., to commercial fishing waters shall apply to coastal fishing waters, see § 113-129.

SUBCHAPTER V. OIL AND GAS CONSERVATION.

Article 27.

Oil and Gas Conservation.

Part 1. General Provisions.

§ 113-378. Persons drilling for oil or gas to register and furnish bond.—Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Conservation and Development or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department of Conservation and Develpment a bond in the amount of five thousand dollars ($5,000) running to the State of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules and regulations of said Department of Conservation and Development. (1945, c. 765, s. 2; 1971, c. 813, s. 1.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, substituted "five thousand dollars ($5,000)" for "two thousand five hundred dollars ($2,500.00)," in the second sentence.

Session Laws 1971, c. 813, s. 8, contains a severability clause.

§ 113-380. Violation a misdemeanor.—Any person, firm or officer of a corporation violating any of the provisions of G.S. 113-378 or G.S. 113-379, shall, upon conviction thereof be guilty of a misdemeanor and shall be fined not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) and may, in the discretion of the court, be imprisoned for not more than two years. (1945, c. 765, s. 4; 1971, c. 813, s. 2.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, substituted "two thousand five hundred dollars ($2,500)" for "five hundred dollars ($500.00)" and "ten thousand dollars ($10,000)" for "two thousand dollars ($2,000.00)."

Session Laws 1971, c. 813, s. 8, contains a severability clause.

Part 2. The Oil and Gas Conservation Act.

§ 113-382. Declaration of policy.—In recognition of imminent evils that can occur in the production and use and waste of natural oil and/or gas in the absence of equal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, and in the absence of adequate measures for the protection of the environment, this law is enacted for the protection of public interests against such evils by prohibiting waste and compelling rateable production and authorizing regulations for the protection of the environment. (1945, c. 702, s. 2; 1971, c. 813, ss. 3, 4.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, deleted the former first paragraph, which delayed the activation of this part until the Governor and Council of State should learn of the discovery of natural oil or natural gas in commercial quantities and proclaim this part to be in full force and effect. The amendment also rewrote the remainder of the section.

Session Laws 1971, c. 813, s. 3, provides: "It is the intention of this section to make the Oil and Gas Conservation Act effective immediately, by removing the restriction upon the activation of said Act until oil or gas is discovered in commercial quantities."

Session Laws 1971, c. 813, s. 8, contains a severability clause.

"Commercial Quantities" Defined.—See opinion of Attorney General to Mr. Roy G. Sowers, Jr., Director, Department of Conservation and Development, 1/20/70.

§ 113-391. Jurisdiction and authority of Petroleum Division; rules, regulations and orders.—The Division shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

The Division shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Division shall have the authorty to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

The Division shall have authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules, regulations or orders for the following purposes:

(1) To require the drilling, operation, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of fresh-water supplies by oil, gas or salt water, or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil or gas wells, producing leases, re-

fineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(9) To regulate the "shooting," perforating, and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

(12) To require; either generally or in or from particular areas, cetificates of clearance or tenders in connection with the transportation of oil or gas.

(13) To regulate the spacing of wells and to establish drilling units.

(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(15) To prevent where necessary the use of gas for the manufacture of carbon black.

(16) To regulate and, if necessary in its judgment for the protection of unique environmental values, to prohibit the location of wells in the interest of protecting the quality of the water, air, soil or any other environmental resource against injury, or damage or impairment. (1945, c. 702, s. 11; 1971, c. 813, ss. 5, 6.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, inserted "operation," and "or to protect the quality of the water, air, soil or any other environmental resource against injury or damage or impairment," in subdivision (1) and added subdivision (16).

Session Laws 1971, c. 813, s. 8, contains a severability clause.

§ **113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and appellate division.**—The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the Division and of the evidence heard by the Division on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the Division, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the appellate division of this State from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the appellate division of this State shall be the same as in other civil actions, except as herein provided. No court of this State shall have power to set aside, modify or vacate any order or decision of the Division except as herein provided. (1945, c. 702, s. 24; 1969, c. 44, s. 70.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the fifth and sixth sentences.

§ **113-415. Conflicting laws.**—No provision of this Article shall be construed to repeal, amend, abridge or otherwise affect the authority and responsibility vested in the North Carolina Board of Water and Air Resources by Article 7 of Chapter 87, pertaining to the location, construction, repair, operation and abandonment of wells, or the authority or responsibility vested in the North Carolina State Board of Health by Article 13, Chapter 130, of the General Statutes pertaining to public water-supply requirements. (1971, c. 813, s. 7.)

Editor's Note. — Session Laws 1971, c. 813, s. 9, makes the act effective July 1, 1971.

Session Laws 1971, c. 813, s. 8, contains a severability clause.

Chapter 113A.

Pollution Control and Environment.

Article 1.

Environmental Policy Act.

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ARTICLE 1.

Environmental Policy Act.

§ **113A-1. Title.** — This Article shall be known as the North Carolina Environmental Policy Act of 1971. (1971, c. 1203, s. 1.)

Editor's Note. — Session Laws 1971, c. 1203, s. 11, provides: "In order to assist the General Assembly in evaluating the administration of this act and the desirability of extending the life of this act beyond the expiration date prescribed by Section 12, the Governor shall report to the Legislative Research Commission on or before August 1, 1972, concerning the experience in the administration of this act, together with his recommendations, if any, for amendment or extension of this act."

Session Laws 1971, c. 1203, s. 12, provides: "This act shall become effective on October 1, 1971, and shall remain in effect until September 1, 1973. No act or proceeding required or authorized under this act shall be initiated after September 1, 1973, but any such act or proceeding pending on said date shall be brought to its conclusion as if this act continued in effect."

§ **113A-2. Purposes.**—The purposes of this Article are: To declare a State policy which will encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment, maintain a healthy and pleasant environment, and preserve the natural beauty of the State; to encourage an educational program which will create a public awareness of our environment and its related programs; to require agencies of the State to consider and report upon environmental aspects and consequences of their actions involving the expenditure of public moneys; and to provide means to implement these purposes. (1971, c. 1203, s. 2.)

§ **113A-3. Declaration of State environmental policy.** — The General Assembly of North Carolina, recognizing the profound influence of man's activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (1971, c. 1203, s. 3.)

§ **113A-4. Cooperation of agencies; reports; availability of information.**—The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, regulations, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Any State agency shall include in every recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;
b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;
c. Mitigation measures proposed to minimize the impact;
d. Alternatives to the proposed action;
e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity; and
f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the Director of the Department of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, the University Council on Marine Sciences, and the Institute of Government. (1971, c. 1203, s. 4.)

§ **113A-5. Review of agency actions involving major adverse changes or conflicts.**—Whenever, in the judgment of the responsible State official, the information obtained in preparing the statement indicates that a major adverse change in the environment, or conflicts concerning alternative uses of available natural resources, would result from a specific program, project or action, and that an appropriate alternative cannot be developed, such information shall be presented to the Governor for review and final decision by him or by such agency as he may designate, in the exercise of the powers of the Governor. (1971, c. 1203, s. 5.)

§ **113A-6. Conformity of administrative procedures to State environmental policy.**—All agencies of the State shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the purposes and provisions of this Article and shall propose to the Governor not later than July 1, 1972, such measures as may be necessary to bring their authority, regulations, policies and procedures into conformity with the intent, purposes and procedures set forth in this Article. (1971, c. 1203, s. 6.)

§ **113A-7. Other statutory obligations of agencies.** — Nothing in this Article shall in any way affect nor detract from specific statutory obligations of any State agency

(1) To comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it,
(2) To coordinate or consult with any other State agency or federal agency, or
(3) To act, or refrain from acting contingent upon the recommendations or certification of any other State agency or federal agency. (1971, c. 1203, s. 7.)

§ **113A-8. Major development projects.** — The governing bodies of all cities, counties, and towns acting individually, or collectively, are hereby authorized to require any special-purpose unit of government and private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such projects. (1971, c. 1203, s. 8.)

§ **113A-9. Definitions.**—As used in this Article, unless the context indicates otherwise:

(1) The term "major development project" shall include but is not limited to shopping centers, subdivisions and other housing developments, and industrial and commercial projects, but shall not include any projects of less than two contiguous acres in extent.
(2) The term "special-purpose unit of government" includes any special district or public authority.
(3) The term "State agency" includes every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include local governmental units or bodies such as cities, towns, other municipal corporations or political subdivisions of the State, county or city boards of education, other local special-purpose public districts, units or bodies of any kind, or private corporations created by act of the General Assembly, except in those instances where programs, projects and actions of local governmental units or bodies are subject to review, approval or licensing by State agencies in accordance with existing statutory authority, in which case local governmental units or bodies shall supply information which may be required by such State agencies for preparation of any environmental statement required by this Article.

(4) The term responsible "State official," as used in this Article, shall mean the Director, Commissioner, Secretary, Administrator or Chairman of the State agency having primary statutory authority for specific programs, projects or actions subject to this Article, or his authorized representative. (1971, c. 1203, s. 9.)

§ **113A-10. Provisions supplemental.**—The policies, obligations and provisions of this Article are supplementary to those set forth in existing authorizations of and statutory provisions applicable to State agencies and local governments. In those instances where a State agency is required to prepare an environmental statement, or comments thereon, under provisions of federal law, such statement or comments will meet the provisions of this Article. (1971, c. 1203, s. 10.)

§§ **113A-11 to 113A-20**: Reserved for future codification purposes.

ARTICLE 2.

Interstate Environmental Compact.

§ **113A-21. Title.**—This article shall be known and cited as "The Interstate Environmental Compact Act of 1971." (1971, c. 805, s. 1.)

§ **113A-22. Purpose.** — The General Assembly of North Carolina recognizes and declares:

(1) The concern for the purity and life-giving qualities of our environment is of primary interest to every citizen of North Carolina and to all Americans.

(2) The quality of out environment depends upon the management of the air, water, and land resources upon which our lives depend.

(3) The ultimate responsibility for the health, safety, and welfare of the citizens of North Carolina rests upon the State government.

(4) The environment of every state is affected with local, state, regional, and national interests since ecological systems cross state boundaries.

(5) The discharge of this responsibility of environmental protection can be enhanced by acting in concert and cooperation with other states and with the federal government. (1971, c. 805, s. 2.)

§ **113A-23. Compact provisions.**—The Interstate Environmental Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

Article 1. Findings, Purposes and Reservations of Power.

(1) Findings.—Signatory states hereby find and declare:

(a) The environment of every state is affected with local, state, regional, and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

(2) Purposes.—The purposes of the signatories in enacting this compact are:

(a) To assist and participate in the national environment protection programs as set forth in federal legislation; to promote intergovernmental cooperation for multi-state action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers, and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

(3) Powers of the United States.—(a) Nothing contained in this compact shall impair, affect or extend the constitutional authority of the United States. (b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its content.

(4) Powers of the States.—Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected.

Article 2.

Short Title, Definitions, Purposes and Limitations.

(1) Short Title.—This compact shall be known and may be cited as the Interstate Environmental Compact.

(2) Definitions.—For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) "State" shall mean any one of the 50 states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

(b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

(c) "Government" shall mean the governments of the United States and the signatory states.

(d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) "Signator" shall mean any state which enters into this compact and is a party thereto.

Article 3.

Intergovernmental Cooperation.

(1) Agreements with the Federal Government and other Agencies.—Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.

Article 4.

Supplementary Agreements, Jurisdiction and Enforcement.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this Article 4.

(2) Recognition of Existing Nonenvironmental Intergovernmental Arrangements.—The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

(3) Recognition of Existing Intergovernmental Agreements Directed to Environmental Objectives.—All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) Modification of Existing Commissions and Compacts.—Recognition herein of multi-state commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multi-state organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multi-state organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) Recognition of Future Multi-State Commissions and Interstate Compacts. —Nothing in this compact shall be construed to prevent signatories from entering into multi-state organizations or other interstate compacts which do not conflict with their obligations under this compact.

(6) Supplementary Agreements.—Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities or duties under this compact of signatories participating therein as embodied in this compact.

(7) Execution of Supplementary Agreements and Effective Date.—The Governor is authorized to enter into supplementary agreements for the State and his official signature shall render the agreement immediately binding upon the State; provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at any subsequent legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) Special Supplementary Agreements.—Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under paragraph (6), Article 4, upon the condition that such nonsignatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

(9) Jurisdiction of Signatories Reserved—Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction.

(10) Complementary Legislation by Signatories.—Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this Article.

(11) Legal Rights of Signatories.—Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

Article 5. Construction, Amendment, and Effective Date.

(1) Construction.—It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction.

(2) Severability.—The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this compact, or such an agreement is declared to be contrary to the constitutionality of the remainder of this compact or of any agreement and the applicabiliy thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

(3) Amendments.—Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

(4) Effective Date.—This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein. (1971, c. 805, s. 3.)

§§ **113A-24 to 113A-29:** Reserved for future codification purposes.

ARTICLE 3.

Natural and Scenic Rivers System.

§ **113A-30. Short title.**—This Article shall be known and may be cited as the "Natural and Scenic Rivers Act of 1971." (1971, c. 1167, s. 2.)

Editor's Note. — Session Laws 1971, c. 1167, s. 12, makes this Article effective July 1, 1971. Session Laws 1971, c. 1167, s. 11, contains a severability clause.

§ **113A-31. Declaration of policy.**—The General Assembly finds that certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife, scientific and cultural values of great present and future benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of the natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the State's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose. (1971, c. 1167, s. 2.)

§ **113A-32. Declaration of purpose.** — The purpose of this Article is to implement the policy as set out in G.S. 113A-31 by instituting a North Carolina natural and scenic rivers system, and by prescribing methods for inclusion of components to the system from time to time. (1971, c. 1167, s. 2.)

§ **113A-33. Definitions.**—As used in this Article, unless the context requires otherwise:

(1) "Department" means the Department of Conservation and Development.
(2) "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without substantial impoundment,

diversion, straightening, rip-rapping, or other modification of the waterway. The existence of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the North Carolina natural and scenic rivers system shall not automatically bar its consideration for such inclusion: Provided, that this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the system.

(3) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(4) "Road" means public or private highway, hard-surface road, dirt road, or railroad.

(5) "Scenic easement" means a perpetual easement in land which (i) is held for the benefit of the people of North Carolina, (ii) is specifically enforceable by its holder or beneficiary, and (iii) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of the land and activities conducted thereon. The object of such limitations and obligations is the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it. (1971, c. 1167, s. 2.)

§ **113A-34. Types of scenic rivers.** — The following types of rivers are eligible for inclusion in the North Carolina natural and scenic rivers system:

Class I. Natural river areas. Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.

Class II. Scenic river areas. Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads. (1971, c. 1167, s. 2.)

§ **113A-35. Criteria for system.**—For the inclusion of any river or segment of river in the natural and scenic rivers system, the following criteria must be present:

(1) River segment length—must be no less than one mile.

(2) Boundaries—of the system shall be the visual horizon or such distance from each shoreline as may be determined to be necessary by the Director, but shall not be less than 20 feet. Provided, that this shall not be construed to authorize the Director to acquire, except by donation or gift, more than 320 acres of land per mile for inclusion within the boundaries.

(3) Water quality—shall not be less than that required for Class "C" waters as established by the North Carolina Board of Water and Air Resources.

(4) Water flow—shall be sufficient to assure a continuous flow and shall not be subjected to withdrawal or regulation to the extent of substantially altering the natural ecology of the stream.

(5) Public access—shall be limited, but may be permitted to the extent deemed proper by the Director, and in keeping with the property interest acquired by the Department and the purpose of this Article. (1971, c. 1167, s. 2.)

§ **113A-36. Administrative agency; federal grants; additions to the system; regulations.**—(a) The Department of Conservation and Development is the agency of the State of North Carolina with the duties and responsibilities to administer and control the North Carolina natural and scenic rivers system.

(b) The Department shall be the agency of the State with the authority to accept federal grants of assistance in planning, developing (which would include the acquisition of land or an interest in land), and administrating the natural and scenic rivers system.

(c) The Director of the Department shall study and from time to time submit to the Governor and to the General Assembly proposals for the additions to the system of rivers and segments of rivers which, in his judgment, fall within one or more of the categories set out in G.S. 113A-34. Each proposal shall specify the category of the proposed addition and shall be accompanied by a detailed report of the facts which, in the Director's judgment, makes the area a worthy addition to the system.

(d) The Board of Conservation and Development may establish reasonable regulations for the purpose of carrying out the provisions of this Article. (1971, c. 1167, s. 2.)

§ **113A-37. Raising the status of an area.**—Whenever in the judgment of the Director of the Department a scenic river segment has been sufficiently restored and enhanced in its natural scenic and recreational qualities, such segment may be reclassified with the approval of the Board, to a natural river area status and thereafter administered accordingly. (1971, c. 1167, s. 2.)

§ **113A-38. Land acquisition.**—(a) The Department of Administration is authorized to acquire for the Department of Conservation and Development, within the boundaries of a river or segment of river as set out in G.S. 113A-35 on behalf of the State of North Carolina, lands in fee title or a lesser interest in land, preferably "scenic easements." Acquisition of land or interest therein may be by donation, purchase with donated or appropriated funds, exchange or otherwise.

(b) The Department of Administration in acquiring real property or a property interest therein as set out in this Article shall have and may exercise the power of eminent domain in accordance with the provisions of Article 2, Chapter 40, of the General Statutes, as amended. (1971, c. 1167, s. 2.)

§ **113A-39. Claim and allowance of charitable deduction for contribution or gift of easement.**—The contribution or donation of a "scenic easement," right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this Article, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and G.S. 105-147(16). The value of the contribution or donation shall be the fair market value of the easement or other interest in land when the contribution or donation is made. (1971, c. 1167, s. 2.)

§ **113A-40. Component as part of State park, wildlife refuge, etc.**—Any component of the State natural and scenic rivers system that is or shall become a part of any State park, wildlife refuge, or state-owned area shall be subject to the provisions of this Article and the Articles under which the other areas may be administered, and in the case of conflict between the provisions of these Articles the more restrictive provisions shall apply. (1971, c. 1167, s. 2.)

§ **113A-41. Component as part of national wild and scenic river system.**—Nothing in this Article shall preclude a river or segment of a river from becoming part of the national wild and scenic river system. The Director of the Department is directed to encourage and assist any federal studies for the inclusion of North Carolina rivers in the national system. The Director may enter into cooperative agreements for joint federal-state administration of a North Carolina river or segment of river: Provided, that such agreements relating to water and land use are not less restrictive than the requirements of this Article. (1971, c. 1167, s. 2.)

§ **113A-42. Violations.**—(a) Civil Action.—Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Director of the Department of Conservation and Development may be compelled to comply with or obey the same by injunction, mandamus, or other appropriate remedy.

(b) Penalties.—Whoever violates, fails, neglects or refuses to obey any provision of this Article or regulation or order of the Director of the Department of Conservation and Development is guilty of a misdemeanor and may be punished by a fine of not more than fifty dollars ($50.00) for each violation, and each day such person shall fail to comply, where feasible, after having been officially notified by the Department shall constitute a separate offense subject to the foregoing penalty. (1971, c. 1167, s. 2.)

§ **113A-43. Authorization of advances.**—The Department of Administration is hereby authorized to advance from land-purchase appropriations necessary amounts for the purchase of land in those cases where reimbursement will be later effected by the Bureau of Outdoor Recreation of the United States Department of the Interior. (1971, c. 1167, s. 2.)

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.
114-4.2a. Assistant attorney general assigned to State Insurance Department.
114-8. [Repealed.]

Article 3.

Division of Criminal Statistics.

Sec.
114-10.1. Police Information Network.
114-11. [Repealed.]

Article 4.

State Bureau of Investigation.

114-17.1. Cooperation of Department of Motor Vehicles.

ARTICLE 1.

Attorney General.

§ **114-2. Duties.**—It shall be the duty of the Attorney General:

(1) To defend all actions in the appellate division in which the State shall be interested, or is a party; and also when requested by the Governor or either branch of the General Assembly to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

(2) At the request of the Governor, Secretary of State, Treasurer, Auditor, Utilities Commission, Commissioner of Banks, Insurance Commissioner or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

(3) To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution.

(4) To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

(5) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.

(6) To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.

(7) To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn.

(8) a. To intervene, when he deems it to be advisable in the public interest, in proceedings before any courts, regulatory officers, agencies and bodies, both State and federal, in a representative capacity for and on behalf of the using and consuming public of this State. He shall also have the authority to institute and originate proceedings before such courts, officers, agencies or bodies and shall have authority to appear before agencies on behalf of the State and its agencies and citizens in all matters affecting the public interest.

b. Upon the institution of any proceeding before any State agency by application, petition or other pleading, formal or informal, the outcome of which will affect a substantial number of residents of North Carolina, such agency or agencies shall furnish the Attorney General with copies of all such applications, petitions and pleadings so filed, and, when the Attorney General deems it advisable in the public interest to intervene in such proceedings, he is authorized to file responsive pleadings and to appear before such agency either in a representative capacity in behalf of the using and consuming public of this State or in behalf of the State or any of its agencies. (1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97; 1967, c. 691, s. 51; 1969, c. 535.)

Editor's Note.—

The 1967 amendment, effective July 1, 1967, substituted "appellate division" for "Supreme Court" in subdivision (1).

The 1969 amendment added subdivision (8).

Duties of Attorney General and Solicitor as to Case on Appeal.—See State v. Hickman, 2 N.C. App. 627, 163 S.E.2d 632 (1968).

§ **114-4. Assistants; compensation; assignments.**—The Attorney General shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182; 1967, c. 260, s. 1.)

Editor's Note. — The 1967 amendment substituted "shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System" for "shall receive a salary to be fixed by the Director of the Budget" at the end of the first sentence.

§ **114-4.2a. Assistant attorney general assigned to State Insurance Department.**—The Attorney General is hereby authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned to the Commissioner of Insurance and the State Insurance Department. Such assistant attorney general shall perform such additional duties as may be assigned to him by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. The salary of said assistant attorney general and a secretary shall be paid from funds appropriated to the Insurance Department. (1967, c. 1115, s. 1.)

Editor's Note.—Section 3, c. 1115, Session Laws 1967, makes the act effective July 1, 1967.

§ **114-7. Salary of Attorney General.**—The Attorney General shall receive an annual salary of twenty-nine thousand five hundred dollars ($29,500.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3; 1967, c. 1130; c. 1237, s. 3; 1969, c. 1214, s. 3; 1971, c. 912, s. 3.)

Editor's Note.—

Both 1967 amendments increased the salary from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary from $20,000 to $27,000.

The 1971 amendment, effective July 1, 1971, increased the salary from $27,000 to $29,500.

§ **114-8:** Repealed by Session Laws 1969, c. 44, s. 89.

ARTICLE 2.

Division of Legislative Drafting and Codification of Statutes.

§ **114-9.1. Revisor of Statutes.**—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)

Editor's Note.—

The 1967 amendment substituted "and he shall be subject to all the provisions of chapter 126 of the General Statutes relating to the State Personnel System" for "and shall receive a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission" at the end of the section.

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

Editor's Note. — Session Laws 1969, c. 1190, s. 57, effective July 1, 1969, repealed this section.

Session Laws 1969, c. 1267, added subdivision (2) of the section as set out above and renumbered former subdivisions (2), (3) and (4) as (3), (4) and (5).

As the opening paragraph and subdivision (1) were not changed by the amendment, they are not set out.

§ 114-10.1. Police Information Network.—(a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of § 114-10 of this article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Department of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2.)

State Government Reorganization.—The Police Information Network was transferred to the Department of Justice by § 143A-55, enacted by Session Laws 1971, c. 864.

§ 114-11: Repealed by Session Laws 1969, c. 1190, s. 57, effective July 1, 1969.

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties.

State Government Reorganization.—The State Bureau of Investigation was transferred to the Department of Justice by § 143A-51, enacted by Session Laws 1971, c. 864.

Cited in Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969); State v. Strickland, 5 N.C. App. 338, 168 S.E.2d 697 (1969).

§ 114-17.1. Cooperation of Department of Motor Vehicles.—Notwithstanding any of the provisions of Chapter 20 of the North Carolina General Statutes, it shall be lawful for the North Carolina Commissioner of Motor Vehicles to cooperate with the Director of the North Carolina State Bureau of Investigation to the extent necessary to provide special agents of the North Carolina State Bureau of investigation on special undercover assignments with motor vehicle operator's license and motor vehicle registration plates under assumed names using false or fictitious addresses. If such motor vehicle operator's license or motor vehicle registration plates are issued pursuant to this section, the Director of the North Carolina State Bureau of Investigation shall be responsible for the use thereof and shall upon request of the North Carolina Commissioner of Motor Vehicles immediately return such motor vehicle operator's license or motor vehicle registration plates for cancellation. (1971, c. 942.)

§ 114-19. Taking fingerprints and photographs of suspects and convicts; criminal statistics.

Opinions of Attorney General. — The Honorable Gilbert H. Burnett, District Court Judge, Fifth Judicial District, 7/23/69.

Origin.—This section, which was enacted in 1965, has its origin in § 148-79, which was originally enacted in 1925 and which was repealed in 1965 upon enactment of this section. Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

This section does not create a new rule of evidence. State v. Strickland, 276 N.C. 253, 173 S.E.2d 129 (1970).

This section is concerned with the compilation and preservation of statistics and records rather than the creation of a new rule of evidence. State v. Strickland, 276 N.C. 253, 173 S.E.2d 129 (1970).

This section does not create an exclusionary rule of evidence. State v. Accor, 277 N.C. 65, 175 S.E.2d 583 (1970).

Taking of Fingerprints and Photographs of Persons Not Charged with Crime.—In view of the express finding that, at the time they were photographed, neither defendant was charged with the commission of any crime, this section neither authorized nor prohibited the taking of the fingerprints and photographs of defendants. State v. Accor, 277 N.C. 65, 175 S.E.2d 583 (1970).

Admissibility of Prints Taken by Arresting Officer.—This section does not prohibit the use in evidence on trial of the prints of defendant taken by the arresting officer, even though there is no factual evidence to establish that such fingerprinting was authorized by the sheriff or chief of police. Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

Not a Limitation on Authority to Fingerprint Misdemeanants.—See opinion of Attorney General to Mr. G. Patrick Hunter, Jr., Charlotte Police Attorney, 2/11/70.

Quoted in Wheeler v. Goodman, 306 F. Supp. 58 (W.D.N.C. 1969).

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SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

State Plan for Public Education.

§ **115-1. General and uniform system of schools.**—A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person 18 years of age, or over, who has not completed a standard high school course of study. There shall be operated in every county and city administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24; 1971, c. 704, s. 1; c. 1231, s. 1.)

Editor's Note.—

The first 1971 amendment, effective July 1, 1971, rewrote this section.

The second 1971 amendment substituted "18" for "twenty-one."

State-imposed segregation in the public schools is unconstitutional. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

And State Authorities Have Affirmative Obligation to End It.—State authorities are duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

The affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

School boards operating state-compelled dual systems are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

The State's duty to effect a transition from the dual system of schools formerly imposed by the Constitution and laws of the State of North Carolina to a unitary nonracial school system falls not only upon the local school boards, but also upon the State Board of Education and the State Superintendent of Public Instruction. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Whether or not the State Board of Education or State Superintendent has actively discriminated against negroes does not affect their burden to actively seek the desegregation of the public schools in North Carolina. The burden rests upon them, as well as upon the local school board to come forward with a plan that promises realistically to work, and promises realistically to work now. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Desegregation of Staffs and Faculties.—There is an affirmative duty on the part of a state school board, as well as on the part of other school officials throughout the state, to desegregate staffs and faculties. This is also a constitutional duty apart from any federal regulatory scheme. Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ **115-2. Administration of school system vested in State Board of Education.**—The general supervision and administration of the free public school system shall be vested in the State Board of Education, to consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the 60th legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments.

The provisions of this section shall not affect the terms of office of the members of the State Board of Education as now constituted. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

§ 115-4. Administrative units classified.

An "administrative unit" is not a "school district" within the meaning of N.C. Const., Art. II, § 29. Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

§ 115-5. School system defined.

Quoted in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-6. Schools classified and defined.

(1) An elementary school, that is, a school which embraces a part or all of the eight elementary grades and which may have a kindergarten or other early childhood program.

(1969, c. 1213, s. 2.)

Editor's Note.—

The 1969 amendment added "and which may have a kindergarten or other early childhood program" at the end of subdivision (1).

As the rest of the section was not changed by the amendment, only subdivision (1) is set out.

Quoted in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E2d 703 (1967).

§ 115-7. Term "district" defined.

A "school district" is an area within a county in which one or more public schools must be maintained. It is so defined in this section. Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

ARTICLE 2.

The State Board of Education.

§ 115-10. Organization of Board.

(d) Voting.—No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion.

(1971, c. 704, s. 3.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, deleted the former third sentence of subsection (d), providing: "The secretary as a Board member is entitled to vote on all matters before the Board."

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 115-11. Powers and duties generally.—The powers and duties of the State Board of Education are defined as follows:

(1) General Supervision and Administration.—The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in § 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

(11) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County.—The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(13) Power to Make Provisions for Sick Leave.—The Board is authorized and empowered, in its discretion, to make provision for sick leave with pay for any public school employee not to exceed five days per school term and promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.

(18) Education Research.—The Board is authorized to sponsor or conduct educational research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745.)

Editor's Note.—

The 1967 amendment rewrote subdivision (11).

The 1969 amendment added subdivision (18).

The first 1971 amendment, effective July 1, 1971, substituted "§ 7" for "§ 5" in subdivision (1).

The second 1971 amendment substituted "public school employee" for "teacher or principal" in the first sentence of subdivision (13).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions affected by the amendments are set out.

Quoted in State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-12. Chief administrative officer of the State Board of Education.—As provided in Article IX, § 4(b) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. (1955, c. 1372, art. 3, s. 1; 1971, c. 704, s. 5.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

§ **115-13. Office and salary.**—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars ($10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of twenty-eight thousand five hundred dollars ($28,500.00) : Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the general fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2; 1971, c. 912, s. 2.)

Editor's Note.—

Both 1967 amendments increased the salary in the second paragraph from $18,000 to $20,000. The first amendatory act provided that the increase should be effective Jan. 1, 1969, and the second amendatory act was made effective July 1, 1967.

The 1969 amendment, effective after July 1, 1969, increased the salary in the second paragraph from $20,000 to $26,000.

The 1971 amendment, effective July 1, 1971, increased the salary in the second paragraph from $26,000 to $28,500.

ARTICLE 5.

County and City Boards of Education.

§ **115-18. How constituted.** — The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2.)

Local Modification. — Bladen: 1967, c. 258; Caldwell: 1967, c. 787; Halifax: 1971, c. 530; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739; Tyrrell: 1969, c. 153.

Editor's Note.—The 1967 amendment, effective July 1, 1969, rewrote this section. Section 7 of the amendatory act provides: "The provisions of this act shall not apply to any county board of education that uses as a method of selecting the members to its board of education an election by a vote of the people as of the effective date of this act."

The 1969 amendment again rewrote this section. Session Laws 1969, c. 1301, s. 4, provides: "All laws and clauses of laws in conflict with this act are repealed, except local acts providing for the election of county boards of education by the people."

Opinions of Attorney General. — Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 9/5/69.

Provisions as to Election of Board Members Superseded by Merger Agreement.— See opinion of Attorney General to Mr. E.P. Dameron, Attorney for the McDowell County Board of Education, 2/10/70.

§ **115-19. How elected.**—The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of chapter 163 of the General Statutes then governing primary elections, and any local acts amendatory thereto.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years. If the appointments heretofore made by the General Assembly are for terms of office which comply with the preceding sentence, elections shall be held in 1970, 1972, and biennially thereafter to fill vacancies as they occur for terms of four years. If the appointments heretofore made by the General Assembly are for terms which all expire in the same year, at the first election held hereunder the three members receiving the highest number of votes shall be elected for terms of four years and the two members elected with the next highest number of votes shall be elected for terms of two years. Thereafter, all candidates shall be elected for terms of four years. If the appointments heretofore made by the General Assembly are for terms of office which do not comply with the first sentence of this paragraph but do not all expire in the same year, and/or if the board consists of any number of members other than five, the board shall, on or before the fourteenth day before the deadline for filing notice of candidacy for county offices in 1970, adopt a resolution designating the term of office to be served by members elected to fill vacancies occurring in 1970 and 1972, which terms shall be either two years or four years, in order that the board shall consist of five members with as nearly equal to one half as possible of the terms of office expiring every two years thereafter. Any such resolution shall be filed with the county board of elections, the State Board of Elections, and the State Board of Education. (1955, c. 1372, art. 5, s. 2; 1967, c. 972, s. 2; 1969, c. 1301, s. 2.)

Local Modification.—Caldwell: 1967, c. 787; Johnston: 1969, c. 261; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739; Tyrrell: 1969, c. 153.

Editor's Note.—

Session Laws 1967, c. 972, s. 2, effective July 1, 1969, rewrote this section.

The 1969 amendment again rewrote this section. Session Laws 1969, c. 1301, s. 4, provides:"All laws and clauses of laws in conflict with this act are repealed, except local acts providing for the election of county boards of education by the people."

As to application of the amendment, see Editor's note to § 115-18.

Opinions of Attorney General. — Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 9/5/69.

Superseded by Special Act for Designated Boards of Education.—See opinion of Attorney General to Mr. John G. Mills, Jr., Attorney for Wake County Board of Education, 2/25/70.

Nonpartisan Election Requires Plurality of Votes Only.—See opinion of Attorney General to Mr. R.V. Biberstein, Jr., Pender County Board of Education Attorney, 3/11/70.

Elections, "Single-Shot" Voting Regulations Not Applicable to County Boards of Education.—See opinion of Attorney General to Mr. Thomas H. Morris, Chairman, Lenoir County Board of Elections, 3/27/70.

§ 115-20. County board of elections to provide for elections.—The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education. (1955, c. 1372, art. 5, s. 3; 1967, c. 972, s. 3.)

Local Modification.—Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739.

Editor's Note. — The 1967 amendment, effective July 1, 1969, substituted "elections of county boards of education" for "such nominations" in the first sentence and added the second sentence.

As to application of the amendment, see Editor's note to § 115-18.

§ 115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids.

Local Modification.—Town of Scotland Neck: 1969, c. 31; town of Warrenton: 1969, c. 578; Littleton-Lake Gaston School District: 1969, c. 628.

§ 115-22. Members to qualify.—Those persons who shall be elected members of the county boards of education must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure to qualify within that time shall constitute a vacancy which shall be filled as set out in G.S. 115-24. Those persons appointed to fill a vacancy must qualify within 30 days after notification. A failure to qualify within that time shall constitute a vacancy.

This section shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people. (1955, c. 1372, art. 5, s. 5; 1967, c. 972, s. 4.)

Local Modification.—Lincoln: 1969, c. 637.

Editor's Note. — The 1967 amendment. effective July 1, 1969, rewrote this section.

As to application of the amendment, see Editor's note to § 115-18.

§ 115-23. Vacancies in nominations for membership on county boards.—If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate. (1955, c. 1372, art. 5, s. 6; 1967, c. 972, s. 5.)

Local Modification. — Lincoln: 1969, c. 637.

Editor's Note.—The 1967 amendment, effective July 1, 1969, inserted "nominated on a partisan basis" and substituted "such" for "by the General Assembly of the members of the county board of education for the county of such candidate, the."

As to application of the amendment, see Editor's note to § 115-18.

§ 115-24. Vacancies in office.—All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of G.S. 115-19 by death, resignation, or other causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election. (1955, c. 1372, art. 5, s. 7; 1967, c. 972, s. 6.)

Local Modification.—Caldwell: 1967, c. 787; Lincoln: 1969, c. 637; Onslow: 1967, c. 630; 1969, c. 2; Randolph: 1967, c. 739.

Editor's Note. — The 1967 amendment, effective July 1, 1969, rewrote this section.

As to application of the amendment, see Editor's note to § 115-18.

Filling Vacancies on Board Whose Members Elected on Nonpartisan Basis.—See opinion of Attorney General to Mr. Jesse C. Carson, Jr., Superintendent, County Schools, 5/18/70.

§ 115-25. Eligibility for board membership; holding other offices.—No one shall be eligible to serve as a member of a county or city board of education who is not known to be a person of intelligence, good moral character, good business qualifications, and known to be in favor of public education. No person while actually engaged in teaching in the public schools, or serving as an employee of the schools, or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, and no member of a district committee, shall be eligible as a member of a county or city board of education.

A member of a board of education is hereby declared to be an officer that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, § 9, of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a county or city board of education. (1955, c. 1372, art. 5, s. 8; 1971, c. 704, s. 6.)

Local Modification. — Guilford: 1971, c. 136.

Editor's Note. — The 1971 amendment, effective July 1, 1971, added "and" before "no member" and deleted "and no person prohibited by Article XIV, § 7, of the Constitution" near the end of the second sentence of the first paragraph and added the second paragraph.

Applicable to Technical Institute Personnel.—See opinion of Attorney General to Mr. Holland McSwain, President, Tri-County Technical Institute, 4/15/70.

§ 115-29. Compensation of board members.

Local Modification.—Johnston: 1969, c. 919; Orange: 1971, c. 347; Polk: 1967, c. 403, amending 1957, c. 210; Warren: 1967, c. 507.

§ 115-32. Power to subpoena and to punish for contempt.

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-34. Appeals to board of education and to superior court.—An appeal shall lie from the decision of all school personnel to the appropriate county or city board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal shall lie from the decision of a county or city board of education to the superior court of the State in any action of a county or city board of education affecting one's character or right to teach. (1955, c. 1372, art. 5, s. 17; 1971, c. 647.)

Editor's Note. — The 1971 amendment added the second paragraph.

Quoted in Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965).

§ 115-35. Powers and duties of county and city boards generally.

(h) Educational Research.—County and city boards of education are authorized to sponsor or conduct educational research and special projects approved by the State Department of Public Instruction and the State Board of Education that may improve the school system under its jurisdiction. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2.)

Cross Reference.—As to duty of board of education to provide school buildings and equipment, see § 115-129 and note thereto.

Editor's Note.—

The 1969 amendment added subsection (h).

As the rest of the section was not changed by the amendment, only subsection (h) is set out.

Sale of Newspapers.—A solicitation or commercial activity, such as the sale of newspapers, is within the power of the school board to regulate. Cloak v. Cody, 326 F. Supp. 391 (M.D.N.C. 1971).

There is no merit to a plaintiff's argument that because the distribution of a newspaper is constitutionally protected he should be allowed to sell. Cloak v. Cody, 326 F. Supp. 391 (M.D.N.C. 1971).

Applied in Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

§ 115-36. Length of school day, school month, and school term.—(a) School Day.—The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six (6) hours: Provided, the several county and city boards of education may adopt rules and regulations allowing handicapped pupils and pupils attending the first and second grades to attend school for a period of less than six (6) hours. The superintendent of the several county and city boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six (6) hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.

(c) School Term.—There shall be operated in every school in the State a uniform school term for instructing pupils of 180 days: Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of 60 days of said term of 180 days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, conditions justify such suspension. Provided, further, that when the operation of any school is suspended the period of suspension shall be deducted from the total of 180 days included for each school year operation, all teachers shall be entitled to normal pay for the days of school of the suspended term, not to exceed a period of 15 school days during the school term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general, and if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary. (1955, c. 1372, art. 5, s. 19; 1963, c. 1223, s. 2; 1969, c. 678; 1971, c. 85; c. 90, s. 1.)

Editor's Note.—

The 1969 amendment added all of the language following the colon in subsection (a).

The first 1971 amendment, in the last sentence of subsection (a), deleted "or" following "emergency," inserted "or any other conditions," and deleted "the remainder of" preceding "that particular day."

The second 1971 amendment, in subsection (c), substituted "conditions justify such suspension" for "the low average of daily attendance in any school justify such suspension" in the first sentence and rewrote a former proviso at the end of that sentence to appear as the present second sentence.

Session Laws 1971, c. 90, s. 2, provides: "This act is retroactive to the beginning of the 1970-71 school year."

As subsection (b) was not changed by the amendments, it is not set out.

§ **115-37. Subjects taught in public schools.**—County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, harmful or illegal drugs including alcohol at the appropriate grade levels. Nothing in this Chapter shall prohibit city or county boards of education from operating a nongraded system in which pupils are taught at their individual learning levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101; 1969, c. 487, s. 2; 1971, c. 356.)

Editor's Note. — The 1969 amendment added the second sentence.

The 1971 amendment substituted "harmful or illegal drugs including alcohol" for "alcoholism, and narcoticism."

§ **115-38. Kindergartens.**—County and city boards of education may provide for their respective administrative units, or for any district in a county administrative unit, kindergartens as a part of the public school system and may operate them from any funds available to the board for this purpose.

Any kindergarten program that shall be established or any kindergarten program now being operated shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with standards adopted by the State Board of Education. (1955, c. 1372, art. 5, s. 21; 1969, c. 1213, s. 3.)

Editor's Note. — The 1969 amendment rewrote this section.

Kindergartens; Establishment in One School of District.—See opinion of Attorney General to Mr. Willis C. Smith, Attorney for Gaston County, Board of Education, 1/27/70.

§ **115-39. Requirements and limitations of board in selecting superintendent and his term of office.**—At a meeting to be held on the first Monday in April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially or quadrennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July first and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent's certificate and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent's certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1; 1967, c. 697.)

Editor's Note.—The 1967 amendment made changes in the first and last paragraphs so as to authorize a four-year term for the superintendent of education, in the discretion of the county or city board of education.

§ 115-44. Assistant superintendent and supervisors. — County and city boards of education shall have authority to employ an assistant superintendent, and supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent and supervisors shall be assigned by the superintendent with the approval of the board of education.

County and city boards of education may, upon the recommendation of the superintendent, elect assistant or associate superintendents for a term of from one to four years. The term may not, however, exceed the expiration date of the superintendent's contract, unless the remaining time of the superintendent's contract is less than one year. If there is less than one year remaining on the superintendent's contract, the assistant or associate superintendent shall be given a contract through the next school year.

The term of employment shall be stated in a written contract which shall be entered into between the board of education and the assistant or associate superintendent. The assistant or associate superintendent may not be dismissed during the term to which he is elected except for misconduct of such a nature as to indicate he is unfit to continue in his position, incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties. All dismissals during the contract period shall follow the procedure set out for the dismissal of principals and teachers in G.S. 115-145. [G.S. 115-142(b) after July 1, 1972]. (1955, c. 1372, art. 5, s. 27; 1971, c. 1188, s. 1.)

Editor's Note. — The 1971 amendment added the second and third paragraphs.

§ 115-51. School food services provided by county and city boards of education.—As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced price lunches to indigent children and for no other purpose. The term, "cost of operation," shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. Personnel shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Provided that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the "cost of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990.)

Editor's Note.—
The 1967 amendment substituted 'providing food services, and the cost of" for "preparing and serving food, and the cost of such inexpensive and expendable" in the fourth sentence, and added the present fifth and sixth sentences.

§ 115-53. Liability insurance and waiver of immunity as to torts of agents, etc.

Without Waiver Liability Limited, etc.—In accord with original. See Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-58. Duties with respect to election of principals, teachers and other personnel.

Opinion of Attorney General. — Mr. William E. Terry, Superintendent, Stokes County Board of Education, 8/12/69.

§ 115-59. School organization statement and allocation of instructional personnel.—(a) Each year the superintendent of each school administrative unit shall submit to the State Board of Education a statement, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require. On the basis of this organization statement, and any other information considered relevant, the State Board of Education shall determine for each administrative unit the number of teachers and other instructional personnel to be included in the State budget.

(b) Under rules and regulations which it promulgates, the State Board of Education shall allocate teachers and instructional personnel to the various administrative units in not more than the following three categories: (i) general teachers;

(ii) vocational teachers; and (iii) special education teachers. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539.)

Editor's Note.—

The 1969 amendment rewrote this section.

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

§ **115-67**: Repealed by Session Laws 1971, c. 883, effective July 1, 1972.

ARTICLE 7.

School Committees—Their Duties and Powers.

§ **115-69. Eligibility and oath of office; holding other offices.**—Each school committeeman or member of an advisory council shall be a person of intelligence, of good moral character, of good business qualifications, and one who is known to be in favor of public education and who resides in the district; and before entering upon the duties of his office, he shall take oath for the faithful performance thereof, which oath may be taken before the county superintendent.

No person, while employed as teacher in either a public school or a private school, or while serving as a member of any county or city board of education or serving as an employee of the schools shall be eligible to serve as a member of a district committee.

A school committeeman appointed to a school committee under G.S. 115-70 or a councilman appointed to an advisory council is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office pursuant to Article VI, § 9, of the Constitution, but any person holding an elective office shall not be eligible to serve on a school committee or advisory council. (1955, c. 1372, art. 7, s. 1; 1971, c. 704, s. 7.)

Editor's Note.—

The 1971 amendment, effective July 1, 1971, inserted "or member of an advisory council" near the beginning of the first paragraph, deleted "or who is prohibited by Article XIV, § 7, of the Constitution" following "employee of the schools" in the second paragraph and added the third paragraph.

§ **115-70. Appointment; number of members; terms; vacancies; advisory council.**

Local Modification.—Cumberland: 1969, c. 238; North Surry School District: 1969, c. 613.

Opinions of Attorney General. — Mr. Ferd L. Davis, Attorney, Wake County Board of Education, 10/28/69.

§ **115-72. How to employ principals, teachers, janitors and maids.**

Local Modification.—By virtue of Session Laws 1967, c. 1112, Polk should be stricken from the replacement volume.

A court may not usurp the discretionary power of the school committee, but must judge the constitutionality of its action on the basis of the facts which were before the board and on its logic. Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966).

Action of School Committee in Refusing to Renew Teacher's Contract Held Arbitrary and Capricious. — See Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966) (decided prior to 1967 amendment to § 115-142, providing contracts continue from year to year until board of education determines employee is not to be retained for succeeding school year).

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

ARTICLE 8.

Creating and Consolidating School Districts and School Administrative Units.

§ **115-74. Creation and modification of school districts by State Board of Education.**—The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts: Provided further, that nothing in this section shall affect the right of any city school administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432; 1967, c. 643, s. 2.)

Editor's Note. — The 1967 amendment added, as the second proviso to the first paragraph, the proviso which formerly appeared at the end of the second paragraph, and deleted the remainder of the second paragraph, relating to consolidation of city and county administrative units.

Cited in United States v. Halifax County Bd. of Educ., 314 F. Supp. 65 (E.D.N.C. 1970).

§ **115-74.1. Consolidation and merger of county and city school administrative units located in the same county.**—City school administrative units may be consolidated and merged with contingous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

(1) The name by which the merged school administrative unit shall be identified and known

(2) The effective date of the merger

(3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including

  a. The termination of any terms of office proposed in the reorganization of the board

  b. The method of constituting and continuing the board of education, the length of the members' terms of office, the dates of induction into office, the organization of the board, the procedure for filling vacancies, and the compensation to be paid members of the board for expenses incurred in performance of their duties

(4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes

(5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit

(6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all administrative units involved

(7) A public hearing, which shall have been announced at least ten days prior to the hearing, on the proposed plan of merger

(8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area

(9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969 are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742.)

Editor's Note. — The 1969 amendment rewrote subdivision (6) and added the last paragraph of the section.

Opinions of Attorney General. — Mr. R.A. Collier, Sr., Attorney for Statesville City School Board, 7/28/69.

Effect of Merger of County and City Unit on Supplemental Taxes in Effect in Each Unit.—See opinion of Attorney General to Mr. Thomas A. Banks, Wake County Attorney, 3/20/70.

§ 115-74.2. Merger of two or more adjoining county school administrative units.—(a) Boards of education of contiguous counties or boards of education in a group of counties in which each county is contiguous with at least one other county in the group, and any city administrative unit located in counties to be merged, may merge school administrative units upon approval by the State Board of Education of a written plan for merger submitted by the boards of education involved and bearing the approval of the tax levying body for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G. S. 115-74.1 (providing for the merger of units in the same county), and shall contain any other provision deemed necessary or appropriate by the State Board of Education or the local boards of education for the merger of school units in two or more counties.

(b) The plan of merger, including any arrangements for financing or taxing for the schools in the new administrative unit, may be, but is not required to be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for the purpose of approving these matters. Such elections or referendums, if held, shall be held under the provisions governing elections or referendums as set forth in G.S. 115-122. Each board of county commissioners shall have authority to have such elections or referendums conducted by the board of elections of its county under the provisions set forth in G.S. 115-122.

(c) If twenty percent (20%) of the qualified voters of a county to be merged, petition the board of county commissioners of their county for an election as to whether their county shall be included in the proposed merger, the board of county commissioners shall call an election on this question for its county under the provisions of G.S. 115-122. The petition must be submitted to the board of county commissioners within ten days following the public hearing required by G.S. 115-74.1 on the proposed plan of merger. The board of county commissioners shall have authority to have such an election conducted by the board of election of its county under the provisions set forth in G.S. 115-122.

(d) Boards of education considering a merger of two or more counties may spend money necessary for studying and preparing for such a merger. (1969, c. 828.)

§ 115-76. Consolidation of districts and discontinuance of schools.

Concurrent Action by County and State Boards of Education Required for Consolidation. — Under subdivision (1) of this section concurrent action by the county board of education and the State Board of Education after the required public hearing is essential in order to consolidate any two high schools with an average daily attendance of 60 or more pupils. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Sufficient Compliance with Subdivision (1).—See Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

§ 115-77. Enlarging tax districts and city units by permanently attaching contiguous property.—The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city administrative units, real property contiguous to said local tax districts or city administrative units, upon the written petition of the owners thereof and the taxpayers of the family or families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit or the committee of such tax district, as the case may be. Provided the petition must be signed by a majority of the persons who are the owners thereof and a majority of the taxpayers of the families living on such real property on the date the petition is filed with the county board of education. Provided further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section; and provided further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 60 days after the approval of such transfer is given by the State Board of Education. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4; 1971, c. 672.)

Editor's Note.—The 1971 amendment inserted "a majority of the" preceding "persons" and "a majority of" preceding "the taxpayers" in the second proviso.

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

ARTICLE 9.

County and City Boards of Education and Budgets.

§ 115-78. Objects of expenditure for operation of public schools.

(b) The current expense fund shall include:

(1) General Control.—Salaries and travel of superintendent, assistant superintendent, business manager, and attendance counselor; salaries of clerical assistants, property costs clerks, and the treasurer, including cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.

(2) Instructional Service.—Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors; salaries and travel of teachers of vocational education including agriculture, home economics, trades and industries and distributive education; clerical and travel expenses of principals; commencement expenses; and instructional supplies.

(3) Operation of Plant.—Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.

(4) Maintenance of Plant.—Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.

(5) Fixed Charges.—Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.

(6) Auxiliary Agencies.—Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.

(7) Special program for hearing-impaired children at the preschool age level and for school age children who are hard-of-hearing, includes cost of purchasing instructional apparatus and equipment, salaries for trained instructors and teachers.

(1969, c. 1166, s. 2.)

Editor's Note.—

The 1969 amendment added subdivision (7) of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Purchase of Accident Insurance by Board of Education.—See opinion of Attorney General to Mr. W.F. Womble, 41 N.C.A.G. 351 (9171).

Applied in Yoder v. Board of Comm'rs, N.C.A.G. 351 (1971).

Cited in United States v. Halifax County Bd. of Educ., 314 F. Supp. 65 (E.D.N.C. 1970).

§ 115-79. Objects of expenditure included in State budget.—The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items or for any other item for which State appropriations are authorized:

- (1) General control:
    - a. Salary of superintendent.
    - b. Travel of superintendent.
    - c. Salaries of clerical assistants.
    - d. Salaries of property and cost clerks.
    - e. Office expenses.
    - f. Per diem and travel of county board of education.
    - g. Salaries of attendance counselors.
- (2) Instructional service:
    - a. Salaries of elementary and high school teachers.
    - b. Salaries of elementary and high school principals.
    - c. Salaries of supervisors.
    - d. Instructional supplies.
- (3) Operation of plant:
    - a. Wages of janitors.
    - b. Fuel.
    - c. Water, light, and power.
    - d. Janitor's supplies.
    - e. Telephones.
- (4) Fixed charges, compensation:
    - a. School employees.
    - b. Injuries to school pupils.
    - c. Tort claims.
- (5) Auxiliary agencies:
    - a. Transportation of pupils:
        - 1. Wages of bus drivers.
        - 2. Gas, oil and grease.
        - 3. Gas storage equipment.
        - 4. Salaries of mechanics.
        - 5. Repair parts and batteries.
        - 6. Tires and tubes.
        - 7. License and title fees.
        - 8. Garage equipment.
        - 9. Contract transportation.
        - 10. Major replacements of chassis and bodies.
        - 11. Principals' bus travel.
    - b. Libraries: Supplies, repairs and replacements.
    - c. Child health program.
    - d. Hearing-impaired program.

In making provision from State funds, the State Board of Education shall effect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. Nothing in this chapter shall prevent the use of State monies for supporting or financing school programs conducted in the summer if approved by the State Board of Education. (1955, c. 1372, art. 9, s. 2; 1963, c. 1223, s. 4; 1969, c. 517, s. 3; c. 1166, s. 3; c. 1213, s. 5.)

Editor's Note.—

The first 1969 amendment added the last sentence.

The second 1969 amendment added paragraph d of subdivision (5).

The third 1969 amendment added "or for any other item for which State appropriations are authorized" at the end of the opening paragraph.

§ 115-80. Rules for preparation of school budgets.—(a) County-Wide Current Expense Fund Budget.—County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.

The county-wide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

Notwithstanding any other provisions of this chapter, when necessity is shown by county and city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, the board of county commissioners shall make a sufficient tax levy to provide the funds: Provided, that nothing in this chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

(1967, c. 1263.)

Editor's Note.—

The 1967 amendment rewrote the last paragraph in subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Constitutionality.—Subsection (a) of this section is a valid exercise of legislative authority. Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

The last paragraph of subsection (a) of this section is authorized by N.C. Const., Art. IX, § 2. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Delegation of Authority.—Under subsection (a) of this section a county operates under a delegation of authority from the General Assembly to carry out a function imposed upon the General Assembly by N.C. Const., Art. IX, § 2. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries.—In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to subsection (a) of this section, the board of county commissioners acts as an agency of the State under a delegation of authority from the General

Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

This section in no way prohibits the county commissioners, upon a proper finding of necessity, from levying an additional tax to supplement the current expense fund for the purpose of supplementing teachers' salaries, if they are otherwise authorized to do so. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

County May Levy Tax to Supplement Teachers' Salaries without Approval of Electorate.—Subsection (a) of this section authorizes a board of county commissioners to levy a tax on property to supplement teachers' salaries without approval of the electorate. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Authority as to Capital Outlay Budget and as to Current Expense Budget Is the Same.—The statutory authority of a board of county commissioners applicable to the establishment of and levying a tax for a capital outlay budget under subsection (c) of this section is the same as that applicable to the county-wide current expense fund budget for schools under subsection (a) of this section. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Tax for County School Capital Reserve Fund.—Since the county school capital reserve fund is, by § 115-80.1 (a), authorized to be contained in the capital outlay budget, the statutory authority of a board of county commissioners applicable to the establishment of and levying a tax for a county school capital reserve fund is thus the same as that applicable to the county-wide current expense fund budget under subsection (a) of this section. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

§ **115-80.1**: Repealed by Session Laws 1971, c. 780, s. 7, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Section Is Constitutional.—This section authorizing the county board of commissioners to levy an ad valorem tax for a county school capital reserve fund, which is to be used for the purpose of anticipating school capital outlays, is a valid exercise of legislative authority; the creation of such fund is for a "necessary expense" within the meaning of N.C. Const., Art. VII, § 6, and does not require a vote of the people. Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

Authority of Board of County Commissioners.—Since the county school capital reserve fund is, by subsection (a) of this section, authorized to be contained in the capital outlay budget, the statutory authority of a board of county commissioners applicable to the establishment of and levying a tax for a county school capital reserve fund is thus the same as that applicable to the county-wide current expense fund budget under § 115-80 (a). Yoder v. Board of Comm'rs, 7 N.C. App. 712, 173 S.E.2d 529 (1970).

§ **115-80.2**: Repealed by Session Laws 1971, c. 780, s. 7, effective July 1, 1973.

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ **115-80.3. Investment of moneys in reserve fund.**—The cash balance, or parts thereof, of the capital reserve fund may be deposited at interest or invested as provided by G.S. 159-28.1. (1959, c. 524; 1967, c. 798, s. 2.)

Cross Reference.—See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

Editor's Note.—The 1967 amendment rewrote this section.

Repeal of Section. — Section 7, Session Laws 1971, c. 780, provides that this section shall be repealed on July 1, 1973.

§§ **115-80.4, 115-80.5**: Repealed by Session Laws 1971, c. 780, s. 7, effective July 1, 1973.

Cross Reference. — See the note catchlined "Revision of Chapter" following the analysis to Chapter 159.

§ 115-85. Fidelity bonds. — The State Board of Education shall, in its discretion, determine what State and local employees shall be required to give bonds for the protection of State school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the State Board of Education is authorized to place the same and pay the premiums thereon.

Boards of education in each county and city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who, as employees of such administrative units, are authorized or permitted to receive any school funds from whatever source, and all persons responsible for, or authorized to handle school property, to be bonded annually for the faithful discharge of their duties as to such school funds in such an amount as in the discretion of said county and city boards of education, with the approval of the board of county commissioners, shall be deemed sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the State of North Carolina. The amount deemed necessary to cover the cost of such surety bond shall be included as an item in the current expense funds of the school budget of each school administrative unit and shall be paid from the funds provided therein; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds protected. (1955, c. 1372, art. 9, s. 8; 1959, c. 573, s. 7; 1971, c. 1095.)

Editor's Note. — The 1971 amendment inserted "annually" and "with the approval of the board of county commissioners" in the first sentence of the second paragraph.

§ 115-87. Procedure in cases of disagreement or refusal of tax levying authorities to levy taxes.—In the event of a disagreement between the county or city boards of education and the tax levying authorities as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, or any item of either fund, the chairman of the county or city board of education and the presiding officer of the tax levying authorities shall arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item. If agreement cannot be reached in this manner, the board of education whose budget is in question and the tax levying authorities shall each have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board.

In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between such boards and he shall render his decision thereon within five days, but either the board of education or the tax levying authorities shall have the right to appeal to the superior court within ten days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive and he shall give judgment requiring the tax levying authorities to levy the tax which will provide the amount of the current expense fund, the capital outlay fund, and the debt service fund, which he finds necessary to maintain the schools in the administrative unit. In case of an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the nine months' school fund and from other sources, an amount for the current expense fund and the prorated part of capital outlay fund equal to the amount of these funds for the previous year. Also, in case of an appeal, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The tax levying authorities shall forthwith levy the taxes according to the judgment rendered and upon refusal to do so, the members of said authority shall be in contempt and may be punished accordingly. (1955, c. 1372, art. 9, s. 10; 1969, c. 44, s. 71.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" near the beginning of the second sentence of the second paragraph.

§ **115-88. Jury trial as to amount needed to maintain schools.**—The tax levying authorities or boards of education shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding session of the superior court, and shall have precedence over all other business of the court. Provided, that if the judge holding the court shall certify to the Chief Justice of the Supreme Court, either before or during such session, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said session, the Chief Justice shall immediately call a special session of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such session. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the tax levying authorities shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the appellate division which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1955, c. 1372, art. 9, s. 11; 1969, c. 44, s. 72.)

Editor's Note.—The 1969 amendment substituted "session" for "term" throughout the first and second sentences and substituted "appellate division" for "Supreme Court" in the last proviso.

ARTICLE 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

§ **115-98. Fines, forfeitures and penalties.**—It shall be the duty of every public officer, including clerks of the several courts and all magistrates, as well as all others in any way related or connected with the assessing, collecting and handling of any of those funds mentioned in the Constitution, Article IX, § 7, which shall belong to and remain in the several counties and which shall be faithfully appropriated for establishing and maintaining the free public schools:

(1) To keep in a proper record book supplied by the county an itemized, detailed statement of the respective amounts received by him in the way of fines, penalties, amercements and forfeitures.

(2) To account for and pay to the county treasurer all of said funds received by him within 30 days after the receipt thereof, to the end that all of said funds may be faithfully appropriated by the county board of education for the purposes mentioned in the Constitution.

(3) To enter immediately upon the docket or record book all of said funds which are assessed, and which shall not be remitted except for good

and sufficient reasons, which reasons shall be stated on the docket and at all times be open to public inspection.

(4) Any officer, including magistrates, violating any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment at the discretion of the court. (1955, c. 1372, art. 10, s. 8; 1971, c. 704, ss. 8, 9.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "and all magistrates" for "and all justices of the peace" and "§ 7" for "§ 5" in the opening paragraph and "magistrates" for "justices of the peace" in subdivision (4).

§ 115-99: Repealed by Session Laws 1969, c. 1190, s. 53, effective January 1, 1971.

§ 115-100. Miscellaneous funds.—It shall be the duty of the county superintendent of schools at least once a year and as directed by the county board of education to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes where applicable are correctly accounted for to the school fund each year; he shall likewise examine the records of the several courts of the county, including magistrates, and their reports filed with the clerk of the superior court, to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be the duty of the superintendent to make a prompt report thereof to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of fines, forfeitures, penalties and other funds accruing to the public school fund to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court. The clear proceeds of such funds shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including magistrates, who shall wilfully fail or refuse to account for all such funds coming into the hands of such officer, shall upon conviction thereof, be guilty of a felony and punished as provided by law in cases of embezzlement. (1955, c. 1372, art. 10, s. 10; 1971, c. 704, s. 10.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "magistrates" for "justices of the peace" near the middle of the first paragraph and in the last sentence of the second paragraph.

ARTICLE 11.

Loans from State Literary Fund.

§ 115-101. Loans by State Board from State Literary Fund.—The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of county and city boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the State

Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096.)

Editor's Note.—

The first 1971 amendment, effective July 1, 1971, substituted "Sec. 6" for "§ 4" in the first paragraph.

The second 1971 amendment added "maintenance buildings and transportation garages" at the end of the first sentence of the second paragraph.

§ **115-102. Terms of loans.**—Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed six per centum (6%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the county or city board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county or city board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094.)

Editor's Note. — The 1971 amendment substituted "six per centum (6%)" for "four per centum (4%)" in the first sentence.

§ **115-107. Validating certain funding and refunding notes of counties.**—The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to Article twenty-four of Chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or from special building funds pursuant to either Chapter one hundred and forty-seven of the Public Laws of one thousand nine hundred and twenty-one, or Article twenty-five of Chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or Chapter two hundred and one of the Public Laws of one thousand nine hundred and twenty-five, or Chapter one hundred and ninety-nine of the Public Laws of one thousand nine hundred and twenty-seven, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being Chapter eighty-one of the Public Laws of one thousand nine hundred and twenty-seven, as amended. (1955, c. 1372, art. 11, s. 7; 1971, c. 704, s. 12.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, deleted "six-months' " preceding "school term as required by the Constitution" near the end of the section.

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

ARTICLE 14.

School Areas Authorized to Vote Local Taxes.

§ **115-116. Purposes for which elections may be called.**

The clear intent of this article is to provide a method by which the county commissioners may be compelled to call an election to obtain a tax levy or for other purposes. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Additional Tax to Supplement Teachers' Salaries.—In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to § 115-80 (a), the board of county commissioners acts as an agency of the State under a delegation of authority from the General Assembly to carry out the duty imposed upon it by N.C. Const., Art. IX, § 2, to maintain a system of public schools. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

None of the statutes in this article would prohibit the county commissioners, upon a proper finding of necessity, from levying an additional tax to supplement the current expense fund for the purpose of supplementing teachers' salaries, if the county commissioners are otherwise authorized to do so. Harris v. Board of Comm'rs, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

Cited in Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

§ 115-121. Action of board of county commissioners or governing body of municipality.

Opinions of Attorney General. — Mr. Robert L. Edwards, Superintendent, Madison County Public Schools, 10/3/69.

§ 115-122.1. Effective date; levy of taxes.

Opinions of Attorney General. — Mr. Rom B. Parker, Halifax County Attorney, 7/29/69.

§ 115-124. Levy and collection of taxes.

Cited in Harris v. Board of Comm'rs, 274 N.C. 343, 163 S.E.2d 387 (1968).

SUBCHAPTER VI. SCHOOL PROPERTY.

ARTICLE 15.

School Sites and Property.

§ 115-125. Acquisition of sites.—County and city boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the administrative unit; but no school may be operated by an administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Article 2, Chapter 40 of the General Statutes, and the determination of the county or city board of education of the land necessary for such purposes shall be conclusive; provided that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290.)

Editor's Note. — The 1969 amendment substituted "fifty (50) acres" for "thirty (30) acres" in the proviso at the end of the section. It also eliminated a former second proviso, applicable to any school administrative unit located within a county having a population of 150,000 or more.

The 1971 amendment inserted "or right-of-way" and "or access road suitable" in the second sentence.

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

Opinions of Attorney General. — Mr. W. Earl Britt, Attorney for Fairmont Board of Education, 7/24/69.

Applied in Hobbs v. County of Moore, 267 N.C. 665, 149 S.E.2d 1 (1966).

Cited in Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

§ 115-126. Sale, exchange or lease of school property; easements and rights-of-way.

Local Modification.—City of Asheboro, as to subsection (e): 1969, c. 233.

Cross Reference.—As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160-61.2.

§ 115-128. Vehicles owned by boards of education exempt from taxation; registration.

Local Modification.—City of Greensboro: 1969, c. 973.

§ 115-129. Provisions for school buildings and equipment.—It shall be the duty of the boards of education of the several administrative school units of the State to make provisions for the nine months' school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a county or city board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for such school, then such city or county board of education is authorized to acquire and utilize as temporary classrooms for the operation of such school, relocatable or mobile classroom units, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which such school is located. The acquisition and installation of such units shall be subject in all respects to the provisions of chapter 143 of the General Statutes. The provisions of chapter 87, article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to county and city boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections. (1955, c. 1372, art. 15, s. 5; 1969, c. 1022, s. 1.)

Editor's Note. — The 1969 amendment added the second paragraph.

Session Laws 1969, c. 1022, s. 2, provides: "This act shall be retroactive in its application and shall apply to all proceedings where offers have been submitted and bids have been obtained and to all contracts for the acquisition of such relocatable, temporary, mobile classrooms whether same have been delivered or not."

Board of Education Presents Needs to Commissioners.—Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Courts Cannot Interfere with Discretion of Board of Education Unless Abused.—The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging; whether new schoolhouses are needed; and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine, etc.—

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere, etc.—The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of education. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

§ 115-131. Board cannot erect or repair building unless site is owned by board.

Opinions of Attorney General. — Mr. Frederick K. Walter, Assistant Superintendent, Alamance County Public Schools, 10/16/69.

§ 115-133.2. Power of boards of education to offer rewards for information leading to arrest, etc., of persons damaging school property.—County and city boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding fifty dollars ($50.00) for information leading to the arrest and conviction of any person or persons who wilfully deface, damage or destroy property, commit acts of vandalism or commit larceny of the property belonging to the public school system under the jurisdiction of and administered by any county or city board of education. The sums and amounts necessary to pay said rewards shall be an item in the current expense budget of said county or city board of education, and said reward shall be paid out of the current expense fund. (1967, c. 369.)

SUBCHAPTER VII. EMPLOYEES.

ARTICLE 17.

Principals' and Teachers' Employment and Contracts.

§ 115-142. Contracts with teachers, principals, and other professional employees; termination of contracts; continuing contracts; notice.—(a) Any person other than the superintendent desiring election as a teacher, principal, or other professional employee in a county or city school administrative unit shall file his or her application in writing with the county or city superintendent of such unit on such forms and in such manner as the superintendent and board of education may prescribe. A professional employee is defined as a person holding a position for which the State Board of Education has established certification requirements. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers, principals, and other professional employees before any salary vouchers shall be paid. The contracts shall be executed in duplicate, with one copy being retained by the superintendent and the other copy being retained by the employee, and no person shall be considered an employee unless he holds a properly executed contract. Proposed contracts tendered prospective employees must be executed and returned to the superintendent within 15 calendar days after date of delivery to the individual or to the post office or otherwise they shall be considered rejected. No county or city board of education shall enter into a contract for the employment of more personnel than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such personnel from local funds. All contracts shall be subject to the allotment of personnel by the State Board of Education and subject further to the condition that when the position for which the employee is employed is terminated the contract is likewise terminated.

(b) All contracts, except contracts with superintendents and assistant and associate superintendents, now or hereafter entered into between a county or city board of education and a teacher, principal, or other professional employee shall continue from year to year unless terminated as hereinafter set forth. When it shall have been determined by a county or city board of education that an employee is not to be retained for the next succeeding school year it shall be the duty of the county or city superintendent to notify the employee, by registered letter deposited in mails addressed to last known address or business address of employee prior to the close of the school year, of the termination of his contract. When it shall have been determined that the services of an employee are not acceptable for the remainder of a current school year, and that the employee should be dismissed and relieved of his position immediately, the provisions and procedures of G.S. 115-67 and G.S. 115-145 shall be applicable. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 1188, s. 2.)

Editor's Note. — The 1967 amendment rewrote this section, which formerly terminated all contracts of principals and teachers at the end of the 1954-1955 term and provided for employment on a yearly basis thereafter.

The 1971 amendment inserted "except contracts with superintendents and assistant and associate superintendents" in the first sentence of subsection (b).

Section 3, c. 223, Session Laws 1967, provides: "This act shall be in full force and effect with the issuance of contracts for the 1967-1968 school term."

For note on racial discrimination in teacher hiring and firing, see 45 N.C.L. Rev. 166 (1966), commenting on Wheeler v. Durham City Bd. of Educ., 363 F.2d 738 (4th Cir. 1966) and Chambers v. Hendersonville City Bd. of Educ., 364 F.2d 189 (4th Cir. 1966).

Amendment Effective July 1, 1972.—Session Laws 1971, c. 883, effective July 1, 1972, will rewrite this section to read as follows:

§ 115-142. System of employment for public school teachers. — (a) Definition of Terms.—As used in this section unless the context requires otherwise:

(1) "Administrator" includes any teacher the majority of whose employed time is devoted to service as a supervisor, principal, or director of a department or the equivalent in a public school system but shall not include the superintendent, associate superintendent, assistant superintendent of any public school system or any substitute or temporary teacher employed by a public school system.

(2) "Board" means a city or county board of education.

(3) "Career teacher" means any teacher who has been regularly employed by a public school system for a period of not less than three successive years and who has been reemployed by a majority vote of the board of such public school system for the next succeeding school year.

(4) "Committee" means the Professional Review Committee created under G.S. 115-142(g).

(5) "Demote" means to reduce compensation or to transfer to a position carrying a lower salary.

(6) "Probationary teacher" means any teacher employed by a public school system who is not a career teacher.

(7) "Substitute teacher" means any teacher who is employed to take the place of a probationary or career teacher who is temporarily absent.

(8) "Superintendent" means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.

(9) "Teacher" means any person who holds at least a "Class A certificate" as provided in G.S. 115-153 or any other regular vocational or rehabilitation teaching certificate issued by the State Department of Public Instruction.

(10) "Temporary teacher" means a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of the death, disability, retirement, resignation, or dismissal of a career or probationary teacher.

(b) Record of Complaints, Commendations and Suggestions.—There shall be maintained in the office of the superintendent a file of any complaints against, commendations of or written suggestions for corrections and improvements made to each teacher by the administration. The complaints, commendations and suggestions shall be signed by the person making the complaint, commendation or suggestion and shall be placed in each teacher's personnel file only after reasonable notice to the teacher. Any denial or explanation relating to such complaint, commendation or suggestion which the teacher desires to make shall be placed in the file. The personnel file shall be open for inspection by such teacher at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board shall adopt.

(c) Election of Career Teachers.—After a teacher has been employed by the same public school system in this State for a period of three consecutive years, the board of that system is required to vote upon that teacher's employment for the next succeeding year. If a majority of the board votes to reemploy the teacher, he or she becomes a career teacher. If a majority of the board votes against reemployment of the teacher, the teacher remains a probationary teacher whose rights are set forth in G.S. 115-142(m)(2). If the board fails to vote, but reemploys the teacher for the next successive year, then the teacher automatically becomes a career teacher. All teachers employed by a public school system of this State at the time this section takes effect who, at the end of the last school year, will either have been employed by that school system (or a successor system if the system has been consolidated) for a total of four consecutive years or will have been employed by a public school system of this State for a total of five consecutive years shall automatically be career teachers if employed for a second year following July 1, 1972. All other teachers employed by a public school system of this State on July 1, 1972, shall be probationary teachers.

In the event that a career teacher is employed in another school system in this State, he shall not be subject to another probationary period of more than two years, and may at the option of the board immediately receive career teacher status. In any event, if such teacher is employed for a third consecutive year, he or she shall automatically become a career teacher.

(d) Career Teachers.—

(1) A career teacher shall not be subjected to the requirement of annual appointment nor shall he or she be dismissed, demoted, or employed on a part-time basis without his or her consent except as provided in subsection (e).

(2) No career teacher who has served as an administrator in a particular position for a period of three successive years in a public school system shall be transferred to a lower paying position as an administrator or to a lower paying nonadministrative position without his consent except for the reasons for which a career teacher may be dismissed or demoted as provided in subsection (e) and in accordance with the procedures set forth in G.S. 115-142(h)(1) pursuant to which a career teacher may be dismissed.

(e) Grounds for Dismissal or Demotion of a Career Teacher.—

(1) No career teacher shall be dismissed or demoted except for:

a. Inadequate performance;
b. Immorality;
c. Insubordination;
d. Neglect of duty;
e. Physical or mental incapacity;
f. Habitual and excessive use of alcoholic beverages or narcotic drugs;
g. Conviction of a felony or a crime involving moral turpitude;
h. Advocating the overthrow of the Government of the United States or of the State of North Carolina by force, violence, or other unlawful means;
i. Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State;
j. Failure to comply with such reasonable requirements as the board may prescribe;
k. Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate; or
l. A justifiable decrease in the number of positions due to district reorganization or decreased enrollment, provided that subdivision (2) is complied with.

(2) When a career teacher is dismissed pursuant to G.S. 115-142(e)(1)l above, his or her

name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal.

(3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing school system and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his or her performance shall be conclusive evidence of satisfactory performance.

(4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher.

(f) Suspension and Reinstatement. — Whenever a board has reason to believe that cause exists for the dismissal of a teacher on any ground specified in paragraphs b to h of subdivision (1) of subsection (e) above and when it is of the opinion that immediate suspension of the teacher is necessary for the best interest of the school system, the board may by resolution suspend a teacher from his position without notice and without hearing. However, within five days after such suspension becomes effective, procedures shall be commenced for the dismissal of the teacher pursuant to the provisions of G.S. 115-142(h)(1). In the event that it is ultimately determined that grounds do not exist for dismissal of the teacher, the teacher shall be reinstated immediately to his or her position and shall be paid for the period of suspension.

(g) Professional Review Committee; Qualifications; Term; Vacancy; Training.—

(1) There is hereby created a Professional Review Committee which shall consist of 121 citizens, 11 from each of the State's Congressional Districts five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years except that the first appointments shall be made as follows: 40 members to serve for a one-year term; 40 members to serve a two-year term, and 41 members to serve a three-year term. The Superintendent of Public Instruction with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill a vacancy shall serve for the unexpired portion of the term of the member of the committee whom he is appointed to replace.

(2) The Superintendent of Public Instruction shall provide for the committee such training as he considers necessary or desirable for the purpose of enabling the members of the committee to perform the functions required of them.

(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5.

(h) Procedure for Dismissal or Demotion of Career Teacher.—

(1) A board may dismiss or demote a career teacher only upon the recommendation of the superintendent.

(2) At least 20 days before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The

notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the committee. A copy of G.S. 115-142 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher.

(3) Within the 15-day period after receipt of the notice, a career teacher may file with the superintendent a request in writing for review of the superintendent's proposed recommendation by a panel of the committee. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the committee is filed with the superintendent.

(4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within 10 days from the time of receipt of such notice, shall designate a panel of five members of the committee (at least two of whom shall be lay persons) who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.

(i) Investigation by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board. —

(1) The career teacher and superintendent will each have the right to designate not more than 40 of the 121 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify those committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.

(2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct such investigation as it may consider necessary for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its investigation and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.

(3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.

(4) When the panel has completed its investigation, it shall prepare a written report and send it to the superintendent. The report shall contain an outline of the scope of its investigation and its finding as to whether or not the grounds for the recommendation of the superintendent are true and substantiated. The panel shall complete its inves-

tigation and prepare the report within 30 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher, provided that such extension does not exceed 60 days.

(5) Within 30 days after the superintendent receives the report of the panel, he shall submit his written recommendation for dismissal to the board or shall drop the charges against the teacher. His recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the committee.

(6) Within 10 days after the receipt of the recommendation of the superintendent and before any formal action is taken, the board shall notify the career teacher by certified mail and furnish to him a copy of the recommendation and of the report of the panel of the committee. If the career teacher is unwilling to abide by the superintendent's recommendation, within 10 days from the date of receipt of the notice he shall notify the board which shall set a time and place for a hearing. The career teacher shall be given at least 10 days' notice of the time and place of the hearing. If the teacher does not notify the board of his unwillingness to abide by the recommendation, the board, if it sees fit, may by resolution dismiss the teacher.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115-142(k) or (l).

(1) The hearing shall be private unless the career teacher or the superintendent requests a public hearing.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115-142, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the career teacher shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115-142 have been followed.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.—

(1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.

(2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, the board, if it sees fit, may by resolution order such dismissal.

(l) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.—

(1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.

(2) The procedure at the hearing shall be such as to permit and secure

a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the system and the career teacher or his counsel shall have the right to cross-examine witnesses.

(3) At the request of either the superintendent or the career teacher, the board shall subpoena any witness residing within the State to appear at the hearing and testify. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The witnesses shall be entitled to receive the same mileage and per diem as witnesses called in civil cases in the State, but the board shall not be accountable for the witness fees of more than 10 witnesses subpoenaed on behalf of the career teacher.

(4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise.

(5) The findings and the order of the board following the hearing shall be in writing and a copy shall be served upon the career teacher. A record of the proceedings shall be made available without charge for the use of the career teacher in the event he wishes to appeal to the superior court.

(m) Probationary Teacher.—

(1) The board of any public school system may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h)(1) above.

(2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient; provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal.—Any teacher who has been terminated by action of the board after a hearing pursuant to subsections (k) or (l) shall have the right to appeal from the decision of the board to the Superior Court for the judicial district in which the teacher is employed. The appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board.

(o) Resignation.—No teacher may resign without the consent of the board except upon 45 days' notice. Provided, however, that giving notice of resignation within 45 days preceding the beginning of the school year shall constitute grounds for the revocation of a teacher's certificate for the remainder of that calendar year or school year, in the discretion of the State Board of Education.

There are no vested rights in regard to reemployment of public school teachers. Johnson v. Branch, 242 F. Supp. 721 (E.D.-N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Right to Employment for Another Year Is Distinguishable from Dismissal for Cause.—The right to be employed or reemployed for another school year is to be distinguished from the problem of dismissal of a teacher for cause. Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Reemployment of Teacher Is Discretionary.—The decision to reemploy a teacher in North Carolina for a subsequent school term is a matter of discretion vested in the principal, who makes the recommendation to the superintendent and board of education which approve it. However, professional personnel are not at the mercy of any whimsical or arbitrary decision school administrators or a county board of education may care to make regarding their retention or reemployment. Wall v. Stanly County Bd. of Educ., 259 F. Supp. 238 (M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967) (decided prior to the 1967 amendment to this section).

But School Officials Must Act in Good Faith.—Those connected with school administration including the county boards of education and school principals, must act in good faith and not arbitrarily, capriciously, or without just cause or be activated by selfish motives. Wall v. Stanly County Bd. of Educ., 259 F. Supp. 238 (M.D.N.C. 1966), rev'd on other grounds, 378 F.2d 275 (4th Cir. 1967) (decided prior to the 1967 amendment to this section).

And Cannot Arbitrarily Deny Federally Protected Rights under Color of State Law.—The discretion of school officials in effectuating their hiring policies does not extend to an arbitrary denial of rights guaranteed by the federal Constitution and acts of Congress, when the denial is made under color of State law. Johnson v. Branch, 242 F. Supp. 721 (E.D.N.C. 1965), rev'd on other grounds, 364 F.2d 177 (4th Cir. 1966) (decided prior to the 1967 amendment to this section).

Discharge of or Failure to Reemploy Negro Teachers.—It is firmly established in the fourth circuit (1) that the Fourteenth Amendment to the federal Constitution forbids the selection, retention, and assignment of public school teachers on the basis of race; (2) that reduction in the number of students and faculty in a previously all-negro school will not alone justify the discharge of or failure to reemploy negro teachers in a school system; (3) that teachers displaced from formerly racially homogeneous schools must be judged by definite objective standards with all other teachers in the system for continued employment; and (4) that a teacher wrongfully discharged or denied reemployment in contravention of these principles is, in addition to equitable remedies, entitled to an award of actual damages. Wall v. Stanly County Bd. of Educ., 378 F.2d 275 (4th Cir. 1967); North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

A long history of racial discrimination, coupled with sudden disproportionate decimation in the ranks of negro teachers when desegregation is finally begun, gives rise to an imputation of racial discrimination in the failure to rehire negro teachers. Such circumstances cast the burden of proof on the school authorities to show that the failure to rehire was for nondiscriminatory reasons, and require that the proof be clear and convincing before the failure to rehire will be upheld. North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

When a system's needs change as a result of compliance with the basic law of the land outlawing racial discrimination, the equal protection clause will not permit the teachers so displaced to be treated as new applicants to the system, unless all teachers, including those to be retained, are so treated. Those displaced teachers, absent good cause for the refusal to rehire, such as age or poor professional performance, must be given the same preference as to reemployment as that given to teachers not so displaced. North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

When the constitutional requirement of racial equality compels realignment of the allotment of teachers, that realignment may not serve as a vehicle for other forms of discrimination. North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

§ **115-142.1. Certified teachers; ten calendar months' employment; vacation; holidays; sick leave.**—The 10 calendar months of employment for certified teachers as provided for herein shall include days of paid vacation, paid legal holidays, and additional days of sick leave. The vacation shall be 1.25 days per month employed as is afforded regular State employees and the holidays shall be those as may occur during the period of employment and as are designated by the State Personnel Office. Sick leave shall be .833 per month employed. The State Board of Education is hereby authorized to formulate the necessary rules and regulations for carrying out the provisions of this section. (1971, c. 1068, s. 2.)

Editor's Note. — Session Laws 1971, c. 1068, s. 4, makes the act effective on July 1, 1971.

§ **115-142.2. Public school supervision; term of employment.**—Public school supervisors shall be employed for a term of 10 and ½ calendar months beginning with the fiscal year 1972-73, and shall be paid monthly at the end of each calendar month of service for term of their employment. Within policy adopted by the State Board of Education, each county and city board of education shall adopt rules and regulations to fix and regulate the duties of public school supervisors during all times included within their term of employment. (1971, c. 1071, s. 1.)

Editor's Note. — Session Laws 1971, c. 1071, s. 4, makes the act effective on July 1, 1971.

§ 115-143. Health certificate required for teachers and other school personnel.

Opinions of Attorney General. — Mr. Harry C. Corbin, Superintendent, Transylvania County Schools, 8/11/69.

§§ **115-144, 115-145**: Repealed by Session Laws 1971, c. 883, effective July 1, 1972.

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.—It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals, teachers, substitute teachers, voluntary teachers, teachers' aides and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969, c. 638, ss. 2, 3; 1971, c. 434.)

Editor's Note. — The 1969 amendment inserted "including student teachers when given authority over some part of the school program by the principal or supervising teacher" near the beginning of the first paragraph and inserted the reference to student teachers in the first sentence of the second paragraph.

The 1971 amendment inserted "substitute teachers, voluntary teachers, teachers' aides and assistants" in the first sentence of the first paragraph and in the first sentence of the second paragraph.

§ 115-147. Power to suspend or dismiss pupils.—The principal of a school shall have authority to suspend or dismiss any pupil who wilfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school: Provided, any suspension or dismissal in excess of 10 school days and any suspension or dismissal denying a pupil the right to attend school during the last 10 school days of the school year shall be subject to the approval of the county or city superintendent: Provided further, any student who is suspended or dismissed more than once during the same school term shall be subject to permanent dismissal for the remainder of the school term at the discretion of the principal, with the approval of the superintendent. In the absence of an abuse of discretion, the decision of the principal, with the approval of the superintendent, shall be final. Every suspension or dismissal for cause shall be reported at once to the superintendent and to the attendance counselor, who shall investigate the cause and deal with the offender in accordance with rules governing the attendance of children in school. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158.)

Editor's Note.—

The 1971 amendment added the second and third sentences.

§ 115-150.4. Refund of fees upon transfer of pupils.—(a) As used in this section:

(1) "Month" shall mean twenty school days;

(2) "First semester" shall mean the first ninety teaching days of the one-hundred eighty days of the school year;

(3) "Second semester" shall mean the last ninety days of the one-hundred eighty days constituting the school year;

(4) "Term" for the purposes of this section shall have the same meaning as that of first semester or second semester.

(b) In all cases where pupils of an administrative unit of the public school system transfer to some other public school in another administrative unit or such pupils are compelled to leave the school in which they are enrolled because of some serious or permanent illness, or for any other good and valid reason, then such pupils or their parents shall be entitled to a refund of the fees and charges paid by them as follows:

(1) If the transfer or departure of the pupil or pupils from the school in which they are enrolled takes place within one month after enrollment, then all such fees and charges shall be refunded in full;

(2) If the transfer or leaving the school on the part of said pupil or pupils takes place after the first month and before the middle of the first semester, then one half of the fees for the first semester shall be refunded, and all fees and charges for the second semester shall be refunded.

(3) If the pupil or pupils transfer or leave the school after the middle of the first semester, then no first semester fees or charges shall be refunded.

(4) If the fees and charges on the part of such pupil or pupils have been paid for a year and such pupil or pupils transfer or leave the school at the end of the first semester or within the first month of the second semester, then all second semester fees and charges shall be refunded in full;

(5) If the fees and charges herein described and set forth have been paid for one year, and the pupil or pupils transfer or leave the school before the middle of the second semester, then one half of the second semester fees shall be refunded;

(6) The words "fees" and "charges" as used in this section shall not include any fees or charges paid for insurance or fees charged for expendable materials.

(7) If the pupil or pupils transfer or leave the school after the middle of the second semester, then no fees shall be refunded.

(8) If the amount of total refund as determined by this section shall be less than one dollar ($1.00), no refund shall be paid.

(c) In all cases where semesters are designated as terms, the word "term" shall have the meaning as above set forth, and the refund shall be on the same basis as the semester refunds set forth in subsection (b).

(d) The principal shall be responsible for refunding fees and charges at the place of the collection of the fees and charges by check made payable to the parent or guardian of pupil or pupils leaving the school as noted in subsection (b). (1969, c. 756.)

ARTICLE 17A.

Interstate Agreement on Qualifications of Educational Personnel.

§ 115-151.1. Purpose, findings, and policy.—(a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower. (1969, c. 631, s. 1.)

Editor's Note.—Session Laws 1969, c. 631, s. 4, makes the act effective July 1, 1969.

§ 115-151.2. Definitions.—As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(4) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools, is acceptable in accordance with the terms of a contract made pursuant to § 115-151.3.

(5) "Receiving state" means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to § 115-151.3.

(6) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico. (1969, c. 631, s. 1.)

§ **115-151.3. Interstate educational personnel contracts.**—(a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this section only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:

(1) Its duration,
(2) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state,
(3) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards,
(4) Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states. (1969, c. 631, s. 1.)

§ **115-151.4. Approved and accepted programs.**—(a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract. (1969, c. 631, s. 1.)

§ **115-151.5. Interstate cooperation.**—The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to § 115-151.3 of this agreement.
(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations

interested in certification and other elements of educational personnel qualification. (1969, c. 631, s. 1.)

§ **115-151.6. Agreement evaluation.** — The designated state officials of any party state(s) may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes. (1969, c. 631, s. 1.)

§ **115-151.7. Other arrangements.**—Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel. (1969, c. 631, s. 1.)

§ **115-151.8. Effect and withdrawal.**—(a) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms. (1969, c. 631, s. 1.)

§ **115-151.9. Construction and severability.**—This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (1969, c. 631, s. 1.)

§ **115-151.10. Designated state official.**—For the purposes of the agreement set forth in this article the "designated state official" for this state shall be the State Superintendent of Public Instruction. He shall enter into contracts pursuant to § 115-151.3 only with the approval of the specific text thereof by the State Board of Education. (1969, c. 631, s. 2.)

State Government Reorganization.—The Interstate Agreement authority was transferred to the Department of Public Education by § 143A-47, enacted by Session Laws 1971, c. 864.

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ **115-152.1. Discrimination against blind prohibited in training and hiring of teachers.**—No person otherwise qualified shall be denied the right to receive credentials from the State Board of Education, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school on the grounds he is totally or partially blind; nor shall any school district refuse to engage a teacher on such grounds, provided, that such blind teacher is able to carry out the duties of the position for which he applies in the school district. (1971, c. 949.)

§ 115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.

Stated in North Carolina Teachers Ass'n v. Asheboro City Bd. of Educ., 393 F.2d 736 (4th Cir. 1968).

§ 115-153.2. Authority for payroll deductions for group insurance and credit union loans.—(a) The State Board of Education may authorize and empower any county or city board of education, the board of trustees of any community college or technical institute, or other governing authority, within the State, to establish a voluntary payroll deduction plan for:

(1) Premiums for any type of group insurance established and authorized by the laws of the State;

(2) Amounts authorized by members of the State Employees' Credit Union or any local teachers' credit unions to be deposited with such organizations;

(3) Loans made to teachers by credit unions.

(b) Any employee of any county or city board of education, any community college, technical institute, or of any educational association, may enter into a written agreement with his or her employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section. (1969, c. 591.)

§ 115-153.3. Additional payroll deductions authorized; written consent to county or city administrative unit.—Any public school teacher who is a member of a credit union organized and established under chapter 54 of the General Statutes may, by executing a written consent to the county or city administrative unit by whom employed, authorize periodical payment or obligation to such credit union to be deducted from their salaries or wages, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable. (1969, c. 890.)

Editor's Note. — The above section in Session Laws 1969, c. 890, is designated § 115-160.5. Since a § 115-160.5 had already been added by Session Laws 1969, c. 638, the section added by c. 890 has been redesignated § 115-153.3.

§ 115-157. Pay of school officials and other employees. — Teachers and principals shall be paid promptly when their salaries are due, provided they have been properly elected, have executed their contracts, and deposited a copy of the same with their respective boards of education, and have taught a school month of 20 days, or for a less number of days when their employment is terminating. All such teachers and principals employed by any administrative unit or any school district, who are to be paid from local funds, shall be paid promptly as provided by law and as State allotted teachers and principals are paid.

Public school employees paid from State funds shall be paid as follows:

Salary vouchers for the payment of all State allotted teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in 12 equal monthly installments in such administrative units as shall request the same of the State Board of Education on or before October first of each school year. Before such request shall be filed, it shall be approved by the board of education, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in 12 installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than nine months. Classified principals shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. Included within the 12 calendar months' employment shall be 1.25 days of annual vacation leave for each month of the 12 months' service which shall be designated by each county and city board of education at a time when students are not scheduled to be in regular attendance. Included within the 12 calendar months' employment, each county and city board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for classified principals as those designated by the State Personnel Council for State employees. Within policy adopted by the State Board of Education, each county and city board of education shall develop rules and regulations to fix and regulate the duties of classified principals during all times included within their term of employment.

The State Board of Education is authorized to prescribe what portion of said extra month shall apply to services rendered before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

The State Board of Education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular State allotted teachers in 10 equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and in accordance with federal laws and regulations relating to such funds.

In any administrative unit which shall request the same of the State Board of Education on or before August 1 of each school year, teachers may be paid in nine equal payments on the basis of service for nine school months, such payments to be made on the same fixed date in each calendar month during the school term as determined by the county or city board of education: Provided, that the county or city board of education shall sustain any loss by reason of an overpayment to any teacher or principal. Principals shall be paid during the school term on the same date as the teachers are paid.

All of the foregoing provisions of this section shall be subject to the requirements that if the Old Age and Survivors Insurance Program of the federal Social Security Act is coordinated with the Teachers' and State Employees' Retirement System pursuant to enactments of the General Assembly of 1955, then and in that event at least fifty dollars ($50.00) or other minimum amount required by federal Social Security laws, of the compensation of every teacher, principal or other school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for federal Social Security coverage, shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6; 1961, c. 1085; 1971, c. 1052.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote the fifth sentence and added the sixth, seventh and eighth sentences of the second paragraph.

§ 115-159.1. Salary of teacher injured during episode of violence. —(a) Any teacher as defined in G.S. 135-1(25) who, while engaged in the course of his employment, suffers injury and disability resulting from any episode of violence shall be entitled to receive his full salary during the shorter period of either the remainder of the school year or the continuation of his disability. These benefits shall be in lieu of all other income or disability benefits payable under workmen's compensation to such teacher only during the period prescribed herein. Thereafter, such teacher shall be paid such income or disability payments to which he might be entitled under workmen's compensation. If the employment of a substitute teacher is necessitated by the disability of the injured teacher, the salary of such substitute teacher shall be paid from the same source of funds from which the teacher is paid. This section shall in no way limit the right of the injured teacher to receive the benefits of medical, hospital, drug and related expense payments from any source, including workmen's compensation. Provided further that this section shall not apply to any teacher who is injured while he himself participates in or provokes such episode of violence except as is incident to the maintenance or restoration of order or to defend himself.

(b) Any teacher claiming the benefits of this section shall file claim with the board of education employing such teacher within one year after the occurrence giving rise to his alleged injury. That board of education shall, within 30 days after receipt of such claim, decide whether and to what extent that teacher is entitled to the benefits of this section and shall forthwith transmit its decision in writing to such teacher. That teacher shall, however, have the right to appeal the decision of that board of education to the North Carolina Industrial Commission by serving that board of education and the North Carolina Industrial Commission with written notice thereof within 30 days after receipt of the board's written decision. In determining all appeals under this section the North Carolina Industrial Commission shall constitute a court for the purpose of hearing de novo and passing upon all claims thereby presented in accordance with procedures utilized by the Commission in determining claims under the Workmen's Compensation Act. The decision of the Industrial Commission in each instance shall be subject to appeal to the North Carolina Court of Appeals as provided in G.S. 143-293 and G.S. 143-294. (1971, c. 640, ss. 1, 2.)

ARTICLE 18B.

Student Teachers.

§ 115-160.5. Student teacher and student teaching defined.—A student teacher is any student enrolled in an institution of higher education approved by the State Board of Education for the preparation of teachers who is jointly assigned by that institution and a county or city board of education to student-teach under the direction and supervision of a regularly employed certified teacher.

Student teaching may include those duties granted to a teacher by G.S. 115-146 and any other part of the school program for which either the supervising teacher or the principal is responsible. (1969, c. 638, s. 1.)

§ 115-160.6. Legal protection.—A student teacher under the supervision of a certified teacher or principal shall have the protection of the laws accorded the certified teacher. (1969, c. 638, s. 1.)

§ 115-160.7. Assignment of duties.—It shall be the responsibility of a supervising teacher, in cooperation with the principal and the representative of the teacher preparation institution, to assign to the student teacher responsibilities and duties that will provide adequate preparation for teaching. (1969, c. 638, s. 1.)

SUBCHAPTER VIII. PUPILS.

ARTICLE 19.

Census, Admissions and Attendance.

§ 115-162. Age requirement and time of enrollment. — Children to be entitled to enrollment in the public schools for the school year 1955-1956, and each year thereafter, must have passed the sixth anniversary of their birth before October first of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October first. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October first. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth.

Children are entitled to enroll in kindergarten programs in the public schools if they have passed the fifth anniversary of their birth before October 15 of the year in which they enroll and if they have presented themselves for enrollment during the first month of the school year. The State Board of Education may change the October 15 date if it deems necessary. (1955, c. 1372, art. 19, s. 2; 1969, c. 1213, s. 4.)

Editor's Note. — The 1969 amendment added the second paragraph.

§ **115-163. Pupils residing in school district shall have advantages of public schools.**—All pupils residing in a school district or attendance area, and who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by county and city boards of education: Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned: Provided, further, that pupils residing in one administrative unit may be assigned either with or without the payment of tuition to a school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards: Provided, further, that the assignment of pupils living in one administrative unit or district to a school located in another administrative unit or district, either with or without the payment of tuition, shall have no effect upon the right of the administrative unit or district to which said pupils are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such administrative unit or district: Provided, further, the boards of education of adjacent administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

Unless otherwise assigned by the county or city board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they reside:

(1) All persons of the district or attendance area who have not completed the prescribed course for graduation in the high school. Provided, the superintendent, or the principal with the approval of the superintendent, of the school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years.

(2) All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal residence in the same.

(3) Any pupil or pupils living with either father, mother or guardian who

has made his or her permanent home within the district. (1955, c. 1372, art. 19, s. 3; 1971, c. 153.)

Editor's Note. — The 1971 amendment added the second sentence in subdivision (1) of the second paragraph.

§ 115-165. Children not entitled to attend public schools.—A child so severely afflicted by mental, emotional or physical incapacities as to make it unlikely for such child to substantially profit by instruction given in the public schools shall not be permitted to attend the public schools of the State. When such child is presented for enrollment in a public school, it shall be the duty of the county or city superintendent of schools to have made the appropriate medical, social, psychological and educational examination of the child to determine whether the child can profit from attending the public schools. When appropriate the school superintendent also may consult with the local health director and county director of public welfare. Upon receipt of a report indicating that the child cannot substantially profit from instruction given in the public school, the county or city superintendent of schools is authorized to exclude the child from the public schools.

If the child is excluded from the public schools, the parent, person standing in loco parentis, or guardian of the child may appeal the superintendent's decision to the city or county board of education as the case may be. Such board of education may uphold the superintendent's decision to exclude the child or it may reverse the decision and order the child's enrollment. If it deems necessary, the board of education may require additional examination of the child. In the event the board upholds the superintendent's decision to exclude the child, the action of the board of education shall be the final administrative determination. The parent or guardian, however, shall have the right to appeal the school board's decision to the court under article 33 of chapter 143 of the North Carolina General Statutes. In all such cases in which a child is excluded from a public school, a complete record of the transaction shall be available to the parent, person standing in loco parentis, or guardian at their request. (1955, c. 1372, art. 19, s. 5; 1961, c. 186; 1965, c. 584, s. 17; 1969, c. 340.)

Editor's Note.—

The 1969 amendment rewrote this section.

ARTICLE 20.

General Compulsory Attendance Law.

§ 115-166. Parent or guardian required to keep child in school; exceptions.—Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. Provided, further that any child which is afflicted by mental, emotional, or physical incapacities so as to make it unlikely that such child could substantially profit by instruction given in the public schools, he or she need not be presented for enrollment upon presentation to the superintendent of city or county schools of evidence that medical, social, psychological and educational evaluation has been made showing that such child could not substantially profit by instruction in the public schools. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846.)

Editor's Note.—

The first 1969 amendment added the second proviso to the last paragraph of the section.

The second 1969 amendment deleted "and in which he is enrolled" following "assigned" in the first paragraph and also deleted a proviso in the first paragraph exempting children from the requirement of that paragraph under certain circumstances, and inserted "could" preceding "substantially profit" near the beginning of the second proviso in the last paragraph.

The 1971 amendment added the second sentence of the first paragraph.

Stated in Godwin v. Johnston County Bd. of Educ., 301 F. Supp. 1339 (E.D.N.C. 1969).

§ 115-169. Violation of law; penalty. — Any parent, guardian or other person violating the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not more than thirty (30) days, or both, in the discretion of the court. (1955, c. 1372, art. 20, s. 4; 1969, c. 799, s. 2.)

Editor's Note. — The 1969 amendment rewrote the provisions relating to punishment.

§ 115-172. Deaf children and blind children to attend school; age limits; minimum attendance.—Every deaf child and every blind child between the ages of six and eighteen years of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school that has an approved program for the deaf or the blind, or in the case of a blind child, such child may attend a public school, for a term of not less than nine months each year. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf or public school as herein provided. As to any deaf child, or any blind child not attending a public school as herein provided, the superintendent of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from his custody any such blind or deaf child whenever such discharge seems necessary or proper. Such discharge or exemption shall be reviewed by the board of directors upon petition by the parent, guardian, or other interested person or the child who has been exempted or discharged; provided, however, that such board shall not be required to review such discharge or exemption more than once during each calendar year. Whenever a blind or deaf child shall reach the age of eighteen years and is still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of twenty-one, unless he becomes capable of self-support at an earlier date. (1955, c. 1372, art. 20, s. 7; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-173. Parents, etc., failing to enroll deaf child in school guilty of misdemeanor; provisos.—The parents, guardians, or custodians of any deaf child or children between the ages of six and eighteen years failing to enroll such deaf child or children in some school for instruction as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf shall in his discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parent, guardian, or custodian shall constitute a continuing offense and shall not be barred by the statute of limitations. (1955, c. 1372, art. 20, s. 8; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind or public school shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. This section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the superintendent of some school for the instruction of the blind shall in his discretion serve written notice on such parents, guardians, or custodians directing that such child be sent to the said school or to a public school, advising such parents, guardians, or custodians of the legal requirements of this section and provided, further, that the willful failure of such parents, guardians, or custodians shall constitute a continuing offense and shall not be barred by the statute of limitations. The authorities of the Governor Morehead School shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1955, c. 1372, art. 20, s. 9; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 115-175. School superintendent to report blind and deaf children. —It shall be the duty of the county and city school superintendents to report the names and addresses of parents, guardians, or custodians of any deaf or blind children residing within their respective school administrative units to the superintendent of the institution provided for each. Such report also shall be made to the Department of Public Instruction. (1955, c. 1372, art. 20, s. 10; 1969, c. 749, s. 1.)

Editor's Note. — The 1969 amendment rewrote this section.

ARTICLE 21.

Assignment and Enrollment of Pupils.

§ 115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.

Constitutionality.—

Although this article has been declared facially constitutional, when such a statute is applied to discriminate against negro pupils, it is given an unconstitutional application. Criteria may not be used to screen and deny negro applicants to a particular school if they are not used in the same manner to screen and deny white applicants similarly situated. Felder v. Harnett County Bd. of Educ., 349 F.2d 366 (4th Cir. 1965).

Power of Local Boards Is Only Subject to Standards and Limitations of This Article.—The State has entrusted to the county and city boards of education the "full and complete" power to assign and reassign each child residing within its unit to a public school, subject only to the standards and limitations prescribed by the Pupil Assignment Law, including the power of the courts of North Carolina to hear de novo an appeal from the final order of the board and, thereupon, to enter the appropriate order. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

This article imposes upon the school board, and upon the courts on appeal from it, a solemn duty, for in applying this article to the application for the reassignment of a child, the board is dealing with an asset of the State which cannot be valued in the terms of the market place. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Which Board May Not Delegate.—The Pupil Assignment Law does not authorize the school board to abdicate or delegate its duty to exercise the power so entrusted to it for the best interests of the applying child. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The school board is endowed by this section with "full and complete" and "final" authority to assign students to whatever schools the board chooses to assign them. The board may not shift this statutory burden to others. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

Hence, Board May Not Transfer Its Power to Federal Employee.—The school board may not, in the hope of receiving money for its school, shut its eyes to the mandate of the statute. It may not, by contract or otherwise, transfer its power to an employee of the federal government, or bind itself to exercise it as he may direct, or in any other manner than that provided in this article, or for any purpose other than that for which the State conferred the power upon it. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the local school board, and not the court, which has the duty to assign pupils and operate the schools, subject to the requirements of the Constitution. It is the court's duty to assess any pupil assignment plan in terms of the Constitution which is still the supreme law of the land. Swann v. Charlotte Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Other Factors Than Mixture of Races May Be Considered.—There is no constitutional requirement that the school board act with the conscious purpose of achieving the maximum mixture of races in the school population. The Constitution permits the board to consider natural geographic boundaries, accessibility of particular schools, and many other factors which are unrelated to race. So long as the boundaries are not drawn for the purpose of maintaining racial segregation, the school board is under no constitutional requirement that it effectively and completely counteract all of the effects of segregated housing patterns. Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Duty to Desegregate Schools.—School officials have the continuing duty to take whatever action may be necessary to create a unitary, nonracial system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has a duty to promote acceptance of and compliance with the law. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

School boards are clearly charged with the affirmative duty to desegregate schools "now" by positive measures. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

School boards operating state-compelled racially dual systems are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination will be eliminated root and branch. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The duty of the local school boards is not simply a negative duty to refrain from active legal racial discrimination, but a duty to act positively to fashion affirmatively a school system as free as possible from the lasting effects of historical apartheid. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board has an affirmative duty to promote faculty desegregation and desegregation of pupils. and to deal with the problem of the all-black schools. Swann v. Charlotte-Mecklenburg Bd. of Educ.. 300 F. Supp. 1358 (W.D.N.C. 1969).

The board must fashion steps which promise realistically to convert promptly to a system without a "white" school and a "negro" school but just schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

De jure segregation was outlawed by the two decisions of the United States Supreme Court in Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180 (1954) and 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955). Swann

v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

"Freedom of Choice".—In desegregating a racially dual school system a plan utilizing "freedom of choice" is not an end in itself. "Freedom of choice" is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school theory has no standing to override the Constitution. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school theory was repudiated by the 1955 General Assembly and still stands repudiated in the Pupil Assignment Act of 1955-56. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The neighborhood school concept never prevented statutory racial segregation; it may not now be validly used to perpetuate segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The quality of public education should not depend on the economic or racial accident of the neighborhood in which a child's parents have chosen to live—or find they must live—nor on the color of his skin. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Where pupils live must not control where they are assigned to school, if some other approach is necessary in order to eliminate racial segregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 306 F. Supp. 1299 (W.D.N.C. 1969).

Desegregation Plan—Burden on School Board.—The burden on a school board today is to come forward with a school desegregation plan that promises realistically to work, and promises realistically to work now. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same—Purpose.—The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about by a school desegregation plan. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same—Methods of Desegregation.—In developing a desegregation plan, the school board is free to consider all known ways of desegregation, including bussing; pairing of grades or of schools; enlargement and realignment of existing zones; freedom of transfer coupled with free transportation for those who elect to abandon de facto segregated schools; and any other methods calculated to establish education as a public program operated according to its own independent standards, and unhampered and uncontrolled by the race of the faculty or pupils or the temporary housing patterns of the community. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Same—Rezoning.—A school desegregation plan should try to avoid any rezoning which tends to perpetuate segregated pupil assignment. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Administrative Transfers. — The board should retain its statutory power and duty to make assignments of pupils for administrative reasons, with or without requests from parents. Administrative transfers shall not be made if the result of such transfers is to restore or increase the degree of segregation in either the transferor or the transferee school. Swann v. Charlotte-Mecklenburg Bd. of Educ., 311 F. Supp. 265 (W.D.N.C. 1970).

Assignment to School outside Administrative Unit.—

The legislature contemplated agreements between boards acting within the framework of the statute and free to accomplish its purpose—the assignment of the individual child to the school where his or her "best interest" would be served without disruption of that school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The board of one administrative unit cannot assign a child to a school in another administrative unit without the consent of the board of the other unit. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Under the Pupil Assignment Law, as amended in 1956, the board of education of one city or county administrative unit may not permit to be enrolled in one of its schools a child who resides in the territory of another unit solely upon its own willingness to do so, plus the desire of the child or its parents to attend that school. Nothing else appearing, the assent of the board of the unit in which the child resides must be obtained. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

The requirement that a child residing in one unit may not be placed in school in another unit without the assent of his resident unit's board is a protection to each unit against raids upon its student body by another unit so as to gain additional teacher allotment by the State on account of increased enrollment, or so as to gain accomplished athletes, or for any other purpose. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is not within the fair intendment of this law that a board may enter into an agreement with some other agency or person that, come what may and regardless of the welfare of the applying child, the board will never agree to assign any child to any school in another county. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Stated in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

Cited in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-176.1. Assignment of pupils based on race, creed, color or national origin prohibited.—No person shall be refused admission into or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts; provided, however, that the board of education of an administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient. No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

The provisions of this article shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of this article shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of an administrative unit. (1969, c. 1274.)

This section cannot be interpreted to frustrate the constitutional prohibition against segregated schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

This section is unconstitutional in part. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

To the extent that this section may interfere with the board's performance of its affirmative constitutional duty to establish a unitary system, it is invalid. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

There is nothing unconstitutional in the first paragraph of this section. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Or in the First Sentence of the Second Paragraph.—The first sentence of the second paragraph allows school boards to establish a geographically zoned neighborhood school system, but it does not require them to do so. Consequently, this sentence does not prevent the boards from complying with their constitutional duty in circumstances where zoning and neighborhood school plans may not result in a unitary system. The clause in the first sentence permitting assignment for "any other reason" in the board's "sole discretion" means simply that the school boards may assign outside the neighborhood school zone for noninvidious, administrative reasons. So read, it presents no constitutional difficulty. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

The second and third sentences of the second paragraph are unconstitutional They plainly prohibit school boards from assigning, compelling, or involuntarily bussing students on account of race, or in order to racially "balance" the school system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

The Constitution is not color-blind with respect to the affirmative duty to establish and operate a unitary school system. A flat prohibition against assignment by race would, as a practical matter, prevent school boards from altering existing dual systems. Consequently, the statute clearly contravenes the Supreme Court's direction that boards must take steps adequate to abolish dual systems. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Because any method of school desegregation involves selection of zones and transfer and assignment of pupils by race, a flat prohibition against racial "balance" violates the equal protection clause of the Fourteenth Amendment. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

North Carolina may not validly enact laws that prevent the utilization of any reasonable method otherwise available to establish unitary school systems. Its effort to do so in the second paragraph of this section is struck down by the equal protection clause of the Fourteenth Amendment and the supremacy clause (Article VI, clause 2 of the United States Constitution). Swann v. Charlotte-Mecklenburg Bd., of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

This section's prohibition against "involuntary bussing" violates the equal protection clause. Bussing may not be necessary to eliminate a dual system and establish a unitary one in a given case, but the legislature went too far when it undertook to prohibit its use in all factual contexts. To say that bussing shall not be resorted to unless unavoidable is a valid expression of state policy, but to flatly prohibit it regardless of cost, extent and all other factors—including willingness of a school board to experiment—contravenes the implicit mandate of Green v. County School Bd., 391 U.S. 430, 437, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968) that all reasonable methods be available to implement a unitary system. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

To forbid all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

The flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

An absolute prohibition against use of ratios—even as a starting point—contravenes the implicit command of Green v. County School Board, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), that all reasonable methods be available to formulate an effective remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

An absolute prohibition against transportation of students assigned on the basis of race, "or for the purpose of creating a balance or ratio," will hamper the ability of local authorities to effectively remedy constitutional violations. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

Thus, Section Is No Obstacle to Desegregation Plan Involving Bussing. — This State's anti-bussing law does not present an obstacle to a school desegregation plan involving bussing, for those provisions of this section in conflict with the plan have been declared unconstitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 431 F.2d 138 (4th Cir. 1970).

The Third Paragraph Is Constitutional. —The third paragraph of this section merely allows the school board noninvidious discretion to assign students to schools for valid administrative reasons. It does not relate to race at all and, so read, is constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

As Is the Fourth Paragraph. — The fourth paragraph of this section relieves school boards from compliance with the statute where they are implementing voluntarily adopted freedom-of-choice plans within their systems. It does not require the boards to adopt freedom of choice in any particular situation, but leaves them free to comply with their constitutional duty by any effective means available, including, where it is appropriate, freedom of choice. So interpreted, the paragraph is constitutional. Swann v. Charlotte-Mecklenburg Bd. of Educ., 312 F. Supp. 503 (W.D.N.C. 1970).

Race Must Be Considered.—Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

A requirement that school assignment plans be "color-blind," against the background of segregation, would render illusory the promise of Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). North Carolina State Bd. v. Swann, 402, U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

School authorities have wide discretion in formulating school policy, and as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements. North Carolina State Bd. of Educ. v. Swann, 402 U.S. 1, 91 S. Ct. 1284, 28 L. Ed. 2d 554 (1971).

Cited in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

§ 115-177. Methods of giving notice in making assignments of pupils.

Cited in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967).

§ 115-178. Application for reassignment; notice of disapproval; hearing before board.

Cross Reference.—See note to § 115-176.

And Emphasis Is on Welfare of Child, etc.—

In accord with original. See In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

It is the best interest of the applying child which must guide the deliberations and control the decision of the board, unless the granting of the application will interfere with the proper administration of the school to which the child seeks reassignment or will endanger the proper instruction, the health or the safety of the other children enrolled therein. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

No Agreement Can Authorize Board to Deny Reassignment Required by Statute.—No agreement of the board with anyone, be he an employee of the federal government or otherwise, can authorize the board to deny an application for reassignment which the legislature, by a statute within its authority to enact, has provided that the board shall grant. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

When Reassignment Must Be Made.—It is the duty of the board to reassign if the reassignment of the child to a new school will be for the best interest of the child and will not interfere with the proper administration of the school. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

System of Free Transfers Held Constitutionally Permissible.—Where a system of free transfers is the only means by which many negroes can attend integrated schools, and each pupil in the system has the option, the existence of the right of transfer is constitutionally permissible. Swann v. Charlotte-Mecklenburg Bd. of Educ., 369 F.2d 29 (4th Cir. 1966).

Cited in Huggins v. Wake County Bd. of Educ., 272 N.C. 33, 157 S.E.2d 703 (1967); In re Reassignment of Albright, 278 N.C. 664, 180 S.E.2d 798 (1971).

§ 115-179. Appeal from decision of board.—Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein.

The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by an interested party or by the board to the appellate division in the same manner as other appeals are taken from judgments of such court in civil actions. (1955, c. 366, s. 4; 1969, c. 44, s. 73.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the last sentence.

"De Novo".—

The Pupil Assignment Law provides that, upon appeal from the board to the superior court, the matter shall be heard de novo. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

In a matter being heard in the superior court de novo, it is as if it were before the court in the first instance. That is, the court has the same powers, the same duties, and the same standards to guide it as the board had in the first instance. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

No agreement of the board can deprive the courts of this State of jurisdiction conferred upon them by this section, or bar the court, before which an appeal from the board's order is brought as provided by this section, from entering the judgment prescribed in such case by this section. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

And Courts Will Determine Right to Reassignment According to Statutory Standards.—So long as the Pupil Assignment Law remains the law of North Carolina, the courts of this State in passing upon appeals from orders of the boards of education concerning applications for the reassignment of children to the public schools, will determine the right to reassignment in accordance with the standards prescribed by the statute, not pursuant to agreements between the board and another or letters from such other party setting forth his ex parte construction of the alleged agreement. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Power of Superior Court.—

On appeal, the superior court has the authority to reassign the child to the school which he and his parents want him to attend, if that is in the best interest of the child and the child's enrollment therein will not interfere with the proper administration of that school or endanger the instruction, the health or the safety of the other pupils there enrolled. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Upon appeal, the superior court has the authority to reassign the child to a school of another administrative unit, even though the board of education of the administrative unit wherein the child resides objects. In re Varner, 266 N.C. 409, 146 S.E.2d 401 (1966).

Applied in Fries v. Rowan County Bd. of Educ., 7 N.C. App. 341, 172 S.E.2d 75 (1970).

Cited in In re Reassignment of Albright, 278 N.C. 664, 180 S.E.2d 798 (1971).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

ARTICLE 22.

School Buses.

§ 115-180. Authority of county and city boards of education.

State Board Relieved, etc.—

In accord with original. See Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

This section authorizes a city board of education, without limitation, to transport all pupils residing within the unit. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

A city board is not required to transport pupils living in the city and attending schools located therein even though transportation to those same schools is furnished pupils living outside the city. Styers v.

Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Relief from Providing Transportation Not Construed as Prohibition against Providing It. — Subsection (e) of § 115-186 merely relieves the city boards of any duty to provide transportation and cannot be construed as a prohibition against providing it—especially in the face of this section which grants to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The school boards have the power to use school buses for all legitimate school purposes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Use of School Buses to Promote Desegregation of Schools.—School buses can be used by the school boards to provide the flexibility and economy necessary to desegregate the schools. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

The school board is free and encouraged to use school buses or other public transportation and to use mobile classrooms as needed to provide equality of educational opportunity. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

Transportation of Students under Desegregation Plan Retaining Freedom of Choice.—If freedom of choice is retained in a desegregation plan, it should include provision for transportation free for any student who requests transfer out of a school where his race is in the majority, and to any school where his race is in the minority, and a means of insuring that all students have full and timely knowledge of the availability of such transportation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 300 F. Supp. 1358 (W.D.N.C. 1969).

§ 115-181. Authority and duties of State Board of Education.

State Board to Allocate Funds.—The State Board is authorized and directed by subsection (f) to allocate, without restriction, the funds appropriated for transportation during the school year to the boards of education which have elected to provide school bus transportation. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Burden of Producing Evidence that Board Failed to Make Allocations.—The burden is upon plaintiffs to produce evidence that the State Board has failed to make the allocations required by subsection (f). Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Authority and Control by State Board Limited.—The only authority and control which the State Board has over the transportation of pupils is that provided in this Article. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

State Board Not Responsible for Operation of School Buses.—The General Assembly has relieved the State Board of all responsibility for the operation of school buses. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

The State Board does not authorize the transportation of any pupils. It allocates available funds to those boards which elect to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

"The Respective County and City Boards of Education" Defined.—In subsection (f), "the respective county and city boards of education" means those which have elected to operate school buses. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Accelerated allocation and expenditure of transportation appropriation is sanctioned under subsection (g) of this section. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Stated in Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

§ 115-183. Use and operation of school buses.

(5) County or city boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. County or city boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

(6) Under rules and regulations to be adopted by the board of education, school buses owned by said board may also be used for the evacuation of pupils and other school employees when such an evacuation is jointly authorized and directed by State and county or city civil defense directors; provided, the State Board of Education shall not be liable for operating costs nor for any compensation claims or tort claims incurred as a result of such an evacuation; provided further when buses are used for such civil defense purposes, the local civil defense agency in the area in which such evacuation tests are conducted shall be liable for operating costs and shall provide liability insurance for the full protection of the pupils and all school employees taking part in such evacuation tests and for all other compensation claims or tort claims incurred as a result of such evacuation. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47.)

Local Modification.—Buncombe: 1967, c. 480.

Editor's Note.—The 1969 amendment, effective July 1, 1969, added present subdivision (5) and deleted the former first sentence in present subdivision (6), relating to the use of school buses for field trips and for transportation to health clinics and to certain concerts.

As the rest of the section was not affected by the amendment, it is not set out.

Stated in Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115-186. School bus routes.

Subsection (e) of this section is plainly constitutional. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

The distinction between county and city pupils, created by subsection (e) of this section, is a constitutionally valid one. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Subsection (e) of this section is wholly reasonable. The State legislature could reasonably have concluded that transportation was more imperative for county students than for city students. The degree of urbanization of the entire State has not yet become so pronounced that the legislature might not reasonably conclude that city students have easier access than do county students to public transportation; that they are more apt to have sidewalks and other pedestrian protections on their way to school; that they are more apt to participate in an "automobile" culture simplifying family transportation and the formation of carpools, than their county-dwelling counterparts. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Whether it would be better and fairer to abolish the city-county distinction and go to a measured-distance-from-school basis is a political question for the people and their legislative representatives. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Whether any school board shall operate a bus transportation system is a matter in its sole discretion. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

There is no "duty" to provide transportation to city pupils attending in-city schools. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

A city board is not required to transport pupils living in the city and attending schools located therein even though transportation to those same schools is furnished pupils living outside the city. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

This section merely declares that the transportation of pupils who live outside the city limits in which the school they attend is located does not impose a correlative duty to transport pupils who live within the city and attend the same school. This classification is entirely reasonable, since ordinarily school children can obtain both private and public transportation more easily in the cities than in rural areas. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

But Boards Not Forbidden to Supply Funds for Intra-City Transportation.—Subsection (e) of this section does not forbid either the State Board or local boards to supply funds for the intra-city transportation of pupils. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Subsection (e) of this section, which merely relieves the city boards of any duty to provide transportation, cannot be construed as a prohibition against providing it—especially in the face of § 115-180, which grants to city boards, without limitation, the authority to operate transportation systems. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Subsection (e) of this section does not prevent the State Board from allocating funds for the intra-city transportation of students. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

Transportation Required for Certain Students.—This section requires provision of transportation for all students who are assigned to schools more than one and one-half miles from their homes. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971).

Local school authorities may be required to employ bus transportation as one tool of school desegregation. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971).

§ 115-188. Purchase and maintenance of school buses, materials and supplies.

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 115-190.1. Transportation continued for area annexed to municipality or included by consolidation of municipalities.—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality.

In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that two or more municipalities have consolidated and the corporate limits of the new, consolidated municipality includes such area, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been consolidated and had not been included within the corporate limits of the new, consolidated municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4; 1967, c. 877.)

Editor's Note.—

The 1967 amendment added the second paragraph.

This section is unconstitutional as creating an unreasonable statutory classification. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

This section is unconstitutional. Its fatal flaw is the arbitrary date of February 6, 1957, which is wholly unrelated to the end apparently sought to be achieved: the allocation of limited transportation funds for the benefit of those students most needing bus transportation. To conclude that urbanization is more pronounced in those areas which were within municipal boundaries on February 6, 1957, than in those then without it, is to posit the timeliness of annexation efforts. This cannot be done. Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969).

Denying transportation to urban pupils residing in areas which were within the boundaries of a municipality on February 6, 1957, while providing it for those living in areas annexed by the city after February 6, 1957, violates the equal protection clause of the Constitution of the United States. Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

§ **115-198. Standard course of study for each grade.** — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. In the course of study adopted by the State Board, the Board may establish a program of continuous learning based upon the individual child's need, interest, and stages of development, so that the program has a nongraded structure of organization. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of harmful or illegal drugs including alcohol.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1; 1969, c. 487, s. 1; 1971, c. 356.)

Editor's Note. — The 1969 amendment added the second sentence.

The 1971 amendment substituted "harmful or illegal drugs including alcohol" for "alcoholism and narcotism" at the end of the second paragraph.

§ **115-198.1. State kindergarten program.** — The State Board of Education shall initiate in each of the eight educational districts, as defined in G.S. 115-3, a State public kindergarten program for five-year-olds in as many schools and for as many pupils as funds appropriated for this purpose will permit. The kindergarten program shall be operated and administered in accordance with rules and regulations adopted by the State Board, upon the recommendation of the State Superintendent of Public Instruction.

Funds appropriated for this program may be used to implement the following

(1) To provide for the establishment and operation of public kindergarten programs;

(2) To stimulate the establishment of educational technology programs in the area of early childhood education in the State teacher training institutions and in the community colleges;

(3) To provide scholarships and grants-in-aid to teachers to permit their attendance at schools and workshops offering instruction in kindergarten education;

(4) To provide services in the Department of Public Instruction in kindergarten education in order that the Department might provide guidance and direction to the program and develop appropriate standards of instruction for all kindergarten programs operating within the State. (1969, c. 1213, s. 1.)

Kindergartens; Establishment in One School of District.—See opinion of Attorney General to Mr. Willis C. Smith, Attorney for Gaston County, Board of Education, 1/27/70.

§ **115-200. Instruction for handicapped persons.** — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of special courses of instruction **for** handicapped, crippled, and other classes of individuals requiring special types of instruction. In carrying out the provisions of this section, the State Superintendent may appoint such personnel as may be needed:

(1) To aid county and city boards of education in the organization of classes for the handicapped.

(2) To recommend plans for the establishment of day classes in schools, home instruction and other methods of special education for handicapped persons, and outline the curriculum to be pursued.

(3) To provide the recommendation of competent medical and psychological authorities as to the eligibility of handicapped persons to take said courses.

(4) To arrange where necessary for a handicapped child or adult person to attend school in an administrative unit or district other than the one in which he resides.

(5) To cooperate with the State Department of Public Welfare, the State Board of Health, the State schools for the blind and deaf, the State sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped persons.

Any child, including those children under the age of six years, or adult who has been determined to be physically or mentally handicapped shall be eligible for such special instruction as may be appropriate to his need and which is available in the area of his residence. Classes of special education may be established and organized in any administrative unit or district which has one or more handicapped individuals when the approval of the State Superintendent of Public Instruction and the State Board of Education has been given. With the same approval, itinerant teachers may be employed to give special instruction.

The State Board of Education is authorized to provide from funds available for public schools a program of special education outlined by the State Department of Public Instruction and approved by the State Board of Education. The State Board is authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the program of special education. (1955, c. 1372, art. 23, s. 3; 1971, c. 645.)

Editor's Note.—The 1971 amendment inserted "including those children under the age of six years" and substituted "need" for "needs" in the first sentence of the second paragraph.

§ 115-204. Instruction in physical education and health education.—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a comprehensive program of physical education and of health education including scientific instruction in the subjects of harmful or illegal drugs including alcohol. It shall be the duty of teachers and principals in connection with this program to screen and observe all pupils in order to detect signs and symptoms of deviation from normal, and to record and report the results of their findings in accordance with the established policies and procedures and upon blanks furnished for this purpose. The State Superintendent of Public Instruction, with the State Board of Health cooperating, shall make rules and regulations regarding screening and observation by teachers and for medical and psychiatric examination of pupils attending the public schools. Correction of chronic remediable defects for underprivileged children may be paid out of school health funds appropriated by the General Assembly to the State Board of Education for allocation to school administrative units in accordance with policies agreed upon by the State Superintendent of Public Instruction and the State Board of Health, and as otherwise provided by law. The State Board of Health shall provide free dental treatment for as many underprivileged school children as possible each year. (1955, c. 1372, art. 23, s. 6; 1971, c. 356.)

Editor's Note. — The 1971 amendment substituted "harmful or illegal drugs including alcohol" for "alcoholism and narcotism" at the end of the first sentence.

ARTICLE 25.

Selection and Adoption of Textbooks.

§§ **115-206 and 115-207 to 115-215:** Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 25A.

Textbooks and Instructional Material.

§ **115-206.1. Textbook needs are determined by course of study.**—When the State Board of Education has adopted, upon the recommendation of the State Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks. Textbooks adopted in accordance with the provisions of this article shall be used by the public schools of the State. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1.)

Editor's Note. — Session Laws 1969, c. 519, repealed former Articles 25, containing §§ 115-206 to 115-215, and 26, containing §§ 115-216 to 115-228, and enacted this article in their stead. Where appropriate, the historical citations to the sections of the repealed articles have been added to the sections of the new article.

§ **115-206.2. State Board of Education to select and adopt textbooks.**—The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1.)

§ **115-206.3. Appointment of Textbook Commission.**—Shortly after assuming office, the Governor, upon recommendation of the State Superintendent, shall appoint a Textbook Commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Six of the members shall be teachers or principals in the elementary grades; five shall be teachers or principals in the high school grades; and one shall be a superintendent of a county or city school administrative unit. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance of their duties at rates specified in G.S. 138-5 (b). (1955, c. 1372, art. 24, s. 3; 1969, c. 519, s. 1.)

State Government Reorganization.—The Textbook Commission was transferred to the Department of Public Education by § 143A-48, enacted by Session Laws 1971, c. 864.

§ **115-206.4. Commission to evaluate books offered for adoption.**—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the category for which he is responsible.

The evaluation report shall give special consideration to the suitability of the book to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1.)

§ **115-206.5. Selection of textbooks by Board.**—At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall then request sealed bids from the publishers on the selected books.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation causes, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1.)

§ **115-206.6. Adoption of textbooks and contracts with publishers.**—The publishers' sealed bids shall be opened in the Board's presence at the next regular meeting after the Board has requested the submission of bids. The Board may then adopt the books required by the courses of study and enter into contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1.)

§ **115-206.7. Continuance and discontinuance of contracts with publishers.**—When an existing or future contract expires, the Board may, with the publisher's approval, continue the contract for any particular book or books for a period not less than one or more than five years. If a publisher desires to terminate a contract that has been extended beyond the original contract period, he shall give notice to the Board ninety days prior to May 1. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ **115-206.8. Procedure for change of textbook.**—The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give the publisher ninety days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1.)

§ **115-206.9. Advice from and suits by Attorney General.** — The form and legality of contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General.

When requested by the Board, the Attorney General shall bring suit against any publisher who fails to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract. The suit shall be brought for an amount sufficient to enforce the contract or to compensate the State for any loss sustained by the publisher's failure to keep his contract. (1955, c. 1372, art. 24, s. 8; 1969, c. 519, s. 1.)

§ **115-206.10. Publishers to register.** — Any publisher who submits books for adoption shall register in the office of the State Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1.)

§ **115-206.11. Sale of books at lower price reduces price to State.**—Every contract made by the Board with the publisher of any school textbook on the state-adopted list shall be deemed to have written therein a condition providing that if that publisher, during the life of his contract with this State, contracts with any other governmental unit or places that textbook on sale anywhere in the United States for a price less than that stipulated in his contract with the State of North Carolina, the publisher shall immediately furnish that textbook to this State at a price not greater than that for which the book is furnished, sold, or placed on sale anywhere else in the nation. (1955, c. 1372, art. 24, s. 10; 1969, c. 519, s. 1.)

§ 115-206.12. Powers and duties of the State Board of Education in regard to textbooks.—The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

(1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State's public school system and to carry out the provisions of this article.
(2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than that operated by the State Board of Education.
(3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1.)

§ 115-206.13. State Board of Education authorized to discontinue handling supplementary and library books.—The State Board of Education may discontinue the adoption of supplementary textbooks and, at the expiration of existing contracts, may discontinue the purchase, warehousing, and distribution of supplementary textbooks. The Board may also discontinue the purchase and resale of library books. Funds appropriated to the State Board of Education for supplementary textbooks shall be transferred to the State Nine Months School Fund for allotment to each school administrative unit, based on its average daily membership, for the purchase of supplementary textbooks, library books, periodicals, and other instructional materials. (1969, c. 519, s. 1.)

§ 115-206.14. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.—(a) Local boards of education shall adopt rules and regulations not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in its school administrative unit for the selection and procurement of supplementary textbooks, library books, periodicals, and other instructional materials needed for instructional purposes in the public schools of that unit. Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1.)

§ 115-206.15. Legal custodians of books furnished by State. — Local boards of education are the custodians of all books furnished by the State. They shall provide adequate and safe storage facilities for the proper care of these books and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1.)

§ 115-206.16. Rental fees for textbooks prohibited; damage fees authorized.—No local board of education may charge any pupil a rental fee for the use of textbooks. Damage fees may be charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education. All money collected on state-owned books as damage fees or from the sale of books under the provisions of this article shall be paid quarterly as collected to the State Board of Education. (1969, c. 519, s. 1.)

§ 115-206.17. Duties and authority of superintendents of local administrative units. — The superintendent of each administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this article and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and monies may be accounted for properly. If any principal or teacher fails to comply with the provisions of this section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1.)

§ 115-206.18. Right to purchase.—Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the public schools of the State from the board of education of the school administrative unit in which the child is enrolled or, in the case of basic textbooks, from the State Board of Education. (1955, c. 1372, art. 25, s. 2; 1969, c. 519, s. 1.)

ARTICLE 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§§ 115-216 to 115-228: Repealed by Session Laws 1969, c. 519, s. 2.

ARTICLE 27.

Vocational Education.

§ 115-231. State Superintendent to enforce Article.—The State Superintendent of Public Instruction shall serve as chief administrative officer of the State Board of Education, and shall designate, by and with the advice and consent of the State Board of Education, such assistants as may be necessary to properly carry out the provisions of this Article. The State Superintendent shall also carry into effect such rules and regulations as the Board may adopt, and shall prepare such reports concerning the condition of vocational education in the State as the Board may require. (1955, c. 1372, art. 26, s. 3; 1971, c. 704, s. 13.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "chief administrative" for "executive" near the beginning of the first sentence.

§ 115-234. Cooperation of county and city authorities with State Board.

Constitutionality. — A county technical institute which provides adult vocational and general educational training is a part of the public school system of the State, and the expenditure of funds by a county as authorized by this section for maintenance of a building used by such technical institute does not violate N.C. Const., Art. IX, § 7. Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ., 4 N.C. App. 617, 167 S.E.2d 538 (1969).

The expenditure of funds by a county for maintenance of a building used by a county technical institute is fully authorized by statute and is not at odds with the meaning or purpose of N.C. Const., Art. IX, § 7. Benvenue Parent-Teacher Ass'n v. Nash County Bd. of Educ., 4 N.C. App. 617, 167 S.E.2d 538 (1969).

§ 115-235.1. Development of program in middle and lower grades.—The State Board of Education shall develop, upon the recommendation of the State Superintendent of Public Instruction, prevocational and industrially oriented practical arts programs for the middle grades of the public school system as funds appropriated for this purpose will permit. A program of instruction interwoven into the curriculum, providing a thorough introduction to the world of work, may also be developed for the lower grades. (1969, c. 1180.)

ARTICLE 29.

Vocational Training in Building Trades.

§ 115-240. Use of funds for purchase of building sites, materials, and for acquiring skilled services.—County and city boards of education are authorized to use supplementary tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trade classes of each public school operated by said county or city board of education. Such city and county boards of education are authorized to use such funds for each school to pay the fees necessary in securing and recording deeds to such property for each public school operated by said county and city boards of education and to purchase all materials needed to complete the construction of buildings by vocational building trade classes: Provided, however, that the cost of materials for any one project shall not exceed twenty thousand dollars ($20,000).

Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1955, c. 1372, art. 28, s. 1; 1971, c. 644.)

Editor's Note. — The 1971 amendment substituted "County and city boards of education" for "Local school administrative units" at the beginning of the first sentence of the first paragraph and added at the end of that sentence "of each public school operated by said county or city board of education." The amendment also substituted "city and county boards of education" for "school administrative units" near the beginning, inserted "for each school" and "for each public school operated by said county and city boards of education" near the middle, and substituted "twenty thousand dollars ($20,000)" for "seven thousand dollars ($7,000) and not more than one project may be undertaken within one school year" at the end, of the second sentence of the first paragraph.

ARTICLE 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ 115-244. Authority to cooperate and plan program of rehabilitation.

State Government Reorganization.—The vocational rehabilitation functions were transferred to the Department of Human Resources by § 143A-146, enacted by Session Laws 1971, c. 864.

Article 33.

Safety Devices Required.

§ 115-258. Eye protection devices required in certain courses.—The governing board or authority of any public or private school or educational institution within the State, wherein shops or laboratories are conducted providing instructional or experimental programs involving:

(1) Hot solids, liquids or molten metals; or
(2) Milling, sawing, turning, shaping, cutting, or stamping of any solid materials; or
(3) Heat treatment, tempering, or kiln firing of any metal or other materials; or
(4) Gas or electric arc welding; or
(5) Repair or servicing of any vehicle; or
(6) Caustic or explosive chemicals or materials,

shall provide for and require that every student and teacher wear industrial quality eye protective devices at all times while participating in any such program. These industrial quality eye protective devices shall be furnished free of charge to the student and teacher. (1969, c. 1050, s. 1.)

Editor's Note. — Session Laws 1969, c. 1050, s. 6, makes the act effective July 1, 1969.

Former article 33 of this chapter, containing sections numbered 115-258 through 115-260, and relating to the authority of the State Board of Education to license certain institutions and regulate degrees, was repealed by Session Laws 1963, c. 448, s. 27.

§ 115-259. Visitors to wear eye safety devices.—Visitors to such shops and laboratories shall be furnished with and required to wear such eye safety devices while such programs are in progress. (1969, c. 1050, s. 2.)

§ 115-260. "Industrial quality eye protective devices" defined.—"Industrial quality eye protective devices," as used in § 115-258, means devices meeting the standards of the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968 approved by the U.S.A. Standards Institute, Inc. (1969, c. 1050, s. 3.)

§ 115-260.1. "Corrective-protective" devices.—In those cases where "corrective-protective" devices that require prescription ophthalmic lenses are necessary, such devices shall only be supplied by those persons licensed by the State to prescribe or supply "corrective-protective" devices. (1969, c. 1050, s. 4.)

Article 34.

Local Option.

§§ 115-261 to 115-273: Repealed by Session Laws 1971, c. 467.

Article 35.

Education Expense Grants.

§§ 115-274 to 115-295: Repealed by Session Laws 1969, c. 1279.

Article 38.

Education of Exceptionally Talented Children.

§ 115-311. District supervisors; appointment, duties and funds.—In each of the eight educational districts into which the State is divided by the General Assembly pursuant to Article IX, § 4(1) of the Constitution of North

Carolina, appropriate programs of education for exceptionally talented children shall be established and developed by a district supervisor of education of the exceptionally talented children in the district. The district supervisors shall be recommended by the Director and appointed by the State Superintendent with the approval of the State Board, and shall be well trained, professional personnel. The district supervisors shall be provided funds for office expense and travel allowances. Their duties shall include assistance of local administrative units in planning programs and developing curricula for the exceptionally talented pupils. (1961, c. 1077, s. 6; 1971, c. 704, s. 14.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "§ 4(1)" for "§ 8" in the first sentence.

ARTICLE 38A.

Education for Hearing-Impaired Children in the Public Schools.

§ 115-315.1. Purpose of article.—It is the purpose of this article to provide, in the public schools of North Carolina, a comprehensive program for hearing-impaired children of preschool age so that such preschool children may be taught and instructed during the critical learning years, and to provide likewise a comprehensive program in the public schools of this State for school age children who, while not deaf, have some degree of hearing impairment which calls for and lends itself to special instruction in the public schools implemented by trained teachers and special equipment. It is further the purpose of this article to provide a system for the identification and professional evaluation of preschool children who have impaired hearing.

It is deemed advantageous that hard-of-hearing children of school age be, as far as is possible, educated in a normal public school environment in their home community and in the presence of children not handicapped by hearing impairment rather than in the isolation of special programs away from the home community and local environment. At the same time the General Assembly recognizes the continuing and strong need for the State's residential schools for the deaf and affirms continued support in such schools. It is not the purpose of this article to duplicate in any manner the function of the residential schools for the deaf. (1969, c. 1166, s. 1.)

§ 115-315.2. Definitions.—Unless the context of this article otherwise requires:

(1) "Deaf" shall mean those children in whom the sense of hearing is nonfunctional for the ordinary purposes of life. The term is inclusive both of congenitally deaf and adventitiously deaf.

(2) "Hard-of-hearing" means those children in whom the sense of hearing, although defective, is functional with or without the hearing aid.

(3) "Hearing-impaired" is inclusive both of the deaf and the hard-of-hearing and includes any child in whom there is some substantial degree of hearing impairment which calls for special instruction or special equipment in the learning processes. (1969, c. 1166, s. 1.)

§ 115-315.3. Organization of program; rules and regulations; eligibility for instructional training; information to local school units.—There shall be organized and administered by the State Superintendent of Public Instruction and the State Board of Education, under the general supervision of the State Superintendent of Public Instruction, a program for the education of hearing-impaired children residing within the State. Such program shall be available to all preschool hearing-impaired children between the ages of one and six and shall be available for all hard-of-hearing children of school age. Such program shall be a continuing program and shall commence during the school year 1969-70.

The State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall formulate reasonable rules prescribing the program and procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation on the basis of adequate individual audiology, medical evaluation and other related factors. Provided, however, children who are of school age and who are, upon medical evaluation, found to be deaf, may be instructed in the North Carolina Schools for the Deaf. In order to assure maximum participation by local school administrative units, full information on the rules and regulations and pertinent information shall be forwarded to the local school unit in time for them to meet the requirements in qualifying for participation in the program.

The State Superintendent of Public Instruction in prescribing the procedures for the operation and maintenance of a program under this article, shall distinguish between the program for preschool children, which program shall be available to all hearing-impaired children of preschool age, and the program for school age children. (1969, c. 1166, s. 1.)

§ **115-315.4. Authority of local school board to establish programs; joint operations; duty of local superintendent.**—County and city boards of education are hereby authorized to establish programs for preschool hearing-impaired children and hard-of-hearing school age children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such program. When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the preschool aged children residing in said unit for the purpose of determining the identity of the hearing-impaired. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such hearing-impaired children within the administrative unit when they shall come to his attention. All preschool children included in the program shall first be afforded an otological and audiological examination. (1969, c. 1166, s. 1.)

§ **115-315.5. Expenditure of State and local funds; gifts.**—In addition to such other funds as may be available for their purpose, county and city boards of education establishing programs for the preschool age hearing-impaired and school age hard-of-hearing under this article are authorized to expend therefor any State or local funds appropriated to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. Any funds received by way of gift for use of the hearing-impaired program, shall be faithfully accounted for the same as if such funds were public funds. County and city boards of education are authorized to include in their capital outlay and current expense budgets, funds to facilitate the establishment, maintenance and operation of programs pursuant to this article, and the tax levying authorities of the counties and municipalities involved are authorized to levy proper taxes therefor. (1969, c. 1166, s. 1.)

§ **115-315.6. Request for teachers and other allotments from State Board; disapproval of request; transfer of funds.**—When the county or city board of education in any administrative unit or units shall approve the establishment of an instruction program for preschool age hearing-impaired children and for the school age hard-of-hearing in said unit or units, it may thereupon request from the State Board of Education an allotment of teachers for the program and such other allotments as may be applicable to the program. When such programs in a unit or a combination of units meets the rules and regulations prescribed in accordance with the State Board of Education, the State Board may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund. Whenever a request is disapproved either by failure to qualify under the rules and regulations established under authority of G.S. 115-315.3 or because of lack of funds, the reason for such disapproval shall be certified by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units making the request. (1969, c. 1166, s. 1.)

ARTICLE 38B.

Education Expense Grants for Exceptional Children.

§ **115-315.7. Statement of legislative policy and purposes.** — The General Assembly of North Carolina recognizes that in unusual circumstances the public schools of this State cannot provide the necessary training for all of its exceptional children. It is further recognized that, in order for the exceptional child to obtain a proper education, it may become necessary for the child to attend a private or out-of-state institution. So that all of our young children may be trained to be useful citizens, and to provide our children with this opportunity where it may not exist in the public schools, it shall be the policy of this State to make an educational expense grant available to each eligible child as provided under this Article, for the private or out-of-state education of such child. (1971, c. 946.)

§ **115-315.8. Definitions.**—As used in this Article,

(1) The term "exceptional child," shall include the seriously emotionally disturbed, the severely learning disabled, the visually and/or hearing handicapped or impaired, the multiple handicapped, the mentally retarded, the crippled or other health impaired child.

(2) The term "State Board" means the State Board of Education. (1971, c. 946.)

§ **115-315.9. Who may apply for State grants.** — Every exceptional child residing in this State who is eligible to attend a public school may apply for an education expense grant through his parent, guardian or person standing in loco parentis. (1971, c. 946.)

§ **115-315.10. Amount of State grants.**—It shall be the policy of the State to make an education expense grant available to each eligible child, as provided under this Article, to cover the cost of tuition in a private or out-of-state educational facility, provided that the amount of said grant shall not exceed one thousand two hundred dollars ($1,200) per year per child. (1971, c. 946.)

§ **115-315.11. Applications to local boards for grants.**—Application for an education expense grant shall be made to the board of education of the administrative unit within which the child resides. Such application shall be on standard forms prescribed by the State Board for that purpose and shall be signed under oath or affirmation by the parent or guardian of the person standing in loco parentis to the child for whom application is made. The application shall then be sent to the State Board for approval as provided for in this Article. (1971, c. 946.)

§ **115-315.12. Powers of State Board to administer student education expense grants.**—In order to accomplish the purposes of this Article, the State Board is authorized:

(1) To receive from the general fund or other sources such sums as the General Assembly may authorize from time to time for such purposes, and to receive from any other donor, public or private, such sums as may be made available, and to cause such sums to be disbursed for the purposes for which they have been provided;

(2) To establish such criteria as the State Board shall deem necessary or

desirable for determining the need of exceptional children for grants under this Article, and for deciding who shall receive grants;

(3) To prescribe the form and regulate the submission of applications for grants and to prescribe the procedures for considering and approving such applications; and

(4) To establish such criteria as the State Board shall deem necessary or desirable for determining which private or out-of-state schools an eligible child must attend in order to obtain an education expense grant. (1971, c. 946.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

ARTICLE 40.

Governor Morehead School.

§ **115-321. Incorporation, name and management.** — The institution for the education of the blind, located in the city of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of a board of directors and superintendent. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

Revision of Article.—Session Laws 1969, c. 749, s. 2, rewrote this article, substituting present §§ 115-321 to 115-334 for former §§ 115-321 to 115-335. No attempt has been made to point out the changes effected by the 1969 act, but the historical citations to the former sections have been added to corresponding sections of the new article.

State Government Reorganization.—The Governor Morehead School was transferred to the Department of Human Resources by § 143A-148, enacted by Session Laws 1971, c. 864.

§ **115-322. Directors; appointment; terms; vacancies.** — (a) There shall be eleven directors of the Governor Morehead School at Raleigh, to be appointed by the Governor. The terms of the directors shall be six years from their appointment and until their successors are appointed and qualified except that:

(1) All directors previously appointed and presently serving shall continue to serve until the expiration of their respective terms.

(2) As the terms of the present board expire, their successors shall be selected so that the terms of four directors shall expire two years from the date of appointment; the terms of four directors shall expire four years from the date of appointment; and the terms of three directors shall expire six years from the date of appointment.

(3) Thereafter, all terms shall be six years, beginning with the date of appointment for succeeding terms.

(b) The Governor shall transmit to the Senate during each session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. The Governor shall fill all vacancies. All appointees by the Governor filling any vacancies shall be for the duration of the unexpired term of the office vacated. (Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; Rev., s. 4188; C. S., s. 5873; 1925, c. 306, ss. 10, 13, 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-323. Chairman, executive committee, and other officials; election, terms, and salaries.**—The board of directors shall organize by electing one of its members chairman, and in addition shall elect two additional members of the board who shall serve with the chairman as the executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent who shall be ex officio secretary of the board, and whose term of office shall be for three years; and such officers, agents and teachers as shall be deemed necessary. The compensation for officers, other than the superintendent, agents and teachers shall be fixed by the State Personnel Department upon the recommendation of the superintendent. (1881, c. 211, s. 3; Code, § 2229; Rev., s. 4189; 1917, c. 35, ss. 1, 2; C. S., s. 5874; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279.)

Editor's Note. — Session Laws 1969, c. 1279, deleted the last sentence, relating to designations of head teachers, in the section as it stood before its amendment by Session Laws 1969, c. 749. The section is set out above as it appears in c. 749.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ **115-324. Meetings of the board and compensation of the members.** — The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and they shall also be paid the same per diem for attending meetings of the board as is provided for boards of other State institutions. (1881, c. 211, s. 4; Code, s. 2230; Rev., s. 4190; C. S., s. 5875; 1943, c. 608, s. 1; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-325. Admission of pupils; how admission obtained.**—The board of directors shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State, not of confirmed immoral character, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of six and eighteen years. Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the board of directors finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution. Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. Until schools for the deaf at Wilson and Morganton are complete and ready to receive deaf students, such deaf students who normally would attend the Governor Morehead School, shall be received and educated therein. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279.)

Editor's Note. — Session Laws 1969, c. 1279, deleted "white" preceding "blind children" and "and in the department of colored all colored deaf-mutes and blind children" following "blind children" near the beginning of the section as it stood before its amendment by Session Laws 1969, c. 749. The section is set out above as it appears in c. 749.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ **115-326. Admission of curable blind.**—It shall be the duty of the directors of the Governor Morehead School to admit into such institution from time to time, provided space is available, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-327. Admission of pupils from other states.**—The board may, on such terms as it deems proper and upon the receipt of tuition and necessary expenses as prescribed by the board, admit as pupils persons of like infirmity from any other state but such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-328. Board may confer diplomas.**—The board may, upon the recommendation of the superintendent and faculty, confer such diplomas or marks of achievement upon its graduates as it may deem appropriate to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-329. Election of officers.** — The board of directors shall elect the superintendent of the school for a term of three years. The term of the present superintendent shall continue until July 1, 1969, and thereafter until his successor shall be elected and qualified. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution, and he shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (1881, c. 211, s. 8; Code, s. 2234; 1889, c. 539; 1893, c. 137; 1901, c. 707, s. 2; Rev., s. 4195; 1917, c. 35, s. 1; C. S., s. 5880; 1943, c. 425; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-330. State Treasurer is ex officio treasurer of institution.** — The State Treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-331. Reports of board to Governor.** — The board shall make a written, informal, annual report to the Governor and shall furnish any information which the Governor shall desire from time to time. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5882; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-332. Removal of officers.**—The board shall have power to remove any officer, employee, or teacher for gross immorality, willful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused. The superintendent with the approval of the board shall fill all vacancies which may occur from any cause. (1881, c. 211, s. 10; Code, s. 2236; Rev., s. 4197; C. S., s. 5883; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-333. Employees.**—The superintendent, subject to the control of the board, shall have power to employ all employees and recommend their compensation to the State Personnel Department for approval, and to discharge them at pleasure. (1881, c. 211, s. 11; Code, s. 2237; Rev., s. 4198; 1917, c. 35, s. 1; C. S., s. 5884; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-334. When clothing, etc., for pupils paid for by county.**—Where it shall appear to the satisfaction of the Director of Public Welfare and the chairman of the board of county commissioners of any county in this State that the parents of any blind child, residing in such county, are then unable to provide such child with clothing and/or traveling expenses to and from the Governor Morehead School, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses for such transportation and clothing, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3;

1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28; 1969, c. 749, s. 2.)

§ **115-335:** Repealed by Session Laws 1969, c. 749, s. 2.

Revision of Article.—See same catchline in note to § 115-321.

ARTICLE 41.

Central North Carolina School for the Deaf.

§ **115-336. Incorporation and location.** — There is hereby established, and there shall be maintained, a school for the deaf of this State which shall be a corporation under the corporate name of the Central North Carolina School for the Deaf. The Board of Directors of the North Carolina schools for the deaf shall be the governing body of the Central North Carolina School for the Deaf. The location of all physical plants, as well as the location of the Central North Carolina School for the Deaf, shall be established and selected by the Board of Directors subject to the approval of the Governor of North Carolina. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000.)

Revision of Article.—Session Laws 1971, c. 1000, revised and rewrote this Article, substituting present §§ 115-336 through 115-342 for former §§ 115-336 through 115-343. No attempt has been made to point out the changes made by the revision, but the historical citations to the former sections have been added to the corresponding sections of the revised Article.

State Government Reorganization.—The schools for the deaf were transferred to the Department of Human Resources by § 143A-149, enacted by Session Laws 1971, c. 864.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ **115-337. Directors; terms; vacancies.**—The North Carolina School for the Deaf at Morganton, North Carolina, Eastern North Carolina School for the Deaf at Wilson, North Carolina, and the Central North Carolina School for the Deaf shall be under the control and management of a Board of Directors consisting of 11 members known as the Board of Directors of North Carolina schools for the deaf. The said Board of Directors shall be constituted and composed as follows: The Governor of North Carolina, upon expiration of the existing terms of the 11-member Board of Directors, shall appoint 11 members or directors for terms of four years each from and after the date of their appointment, and these 11 members shall constitute the Board of Directors of North Carolina schools for the deaf. All directors appointed as herein provided shall hold office until their successors are appointed and qualified. The Governor of North Carolina shall fill all vacancies in office of said directors arising because of death, resignation, or any reason whatsoever. The Governor shall have the power to remove any member of the Board of Directors whenever, in his opinion, it is to the best interest of the State to remove such person; and the Governor shall not be required to give any reason for such removal. (1961, c. 968; 1963, c. 448, s. 28; 1971, c. 1000.)

§ **115-338. Organization of board; other officials.**—The Board of Directors shall organize by appointing one of its number president and three as an executive committee, who shall hold office for two years; they shall elect a superintendent for each school whose terms of office shall be three years; and such officers, teachers, and agents as shall be deemed necessary. (1961, c. 968; 1963, c. 448, s. 28; c. 1011; 1971, c. 1000.)

§ **115-339. Superintendent.**—The superintendents shall be teachers with accredited training as teachers of the deaf, possessing knowledge, skill, and ability in their profession; and experience in the management and instruction of the deaf. They shall possess good executive ability, high moral character, and shall be the chief executive officers of the schools for the deaf. They shall devote their whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits, as provided for in this Article and under the supervision of the Board. The Board elects all teachers and subordinate officers by and with the consent and recommendation of the superintendents. (1961, c. 968; 1963, c. 448, s. 28; 1971, c. 1000.)

§ **115-340. Pupils admitted; education.**—The Board of Directors shall according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all deaf children resident of the State not of confirmed immoral character, not imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of six and 21 years; provided, that the Board of Directors may admit students under the age of six years when in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens and/or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The Board of Directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The Board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf.

The Board of Directors shall encourage the State to provide the classrooms with modern auditory training equipment, audio-visual media equipment, and any other special equipment to provide the best educational conditions for the deaf. The Board of Directors shall provide a teacher training program in the State. The Board of Directors shall provide for a comprehensive vocational and technical training program for boys and girls as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000.)

§ **115-341. Free textbooks and State purchase and rental system.**—The Central North Carolina School for the Deaf shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in the State. (1943, c. 205; 1963, c. 448, s. 28; 1971, c. 1000.)

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ **115-342. Powers of Board.**—The Board of Directors shall have the power and authority to make such bylaws, rules and regulations, not inconsistent with the laws of the State, as may be necessary for the proper management of said Central North Carolina School for the Deaf and its officers, agents and employees; and shall conduct the said school in such way, as far as practicable, as to make it self-sustaining. The Board of Directors is further authorized to make such arrangements with the board of directors of any State hospital, the governing authority of any municipality, or of any county, as may be mutually agreed upon, to promote convenience and economy for joint water supply, lighted areas, use of sewage facilities, or any other utilities or facilities that may be necessary and as may be agreed upon. (1891, c. 399, ss. 8, 9, 10; Rev., s. 4205; C. S., s. 5893; 1963, c. 448, s. 28; 1971, c. 1000.)

§ **115-343:** Repealed by Session Laws 1971, c. 1000.

Revision of Article.—See same catchline under § 115-336.

ARTICLE 42.

Central Orphanage of North Carolina.

§ 115-344. Creation; powers.

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-345. Directors; selection, self-perpetuation, management of corporation.—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said "The Central Orphanage of North Carolina." The Governor of North Carolina shall appoint five citizens of Granville County as members of said board of directors, and the thirteen so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1969, c. 1279.)

Editor's Note.—

The 1969 amendment deleted "white" preceding "citizens" in the second sentence.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-346. Board of trustees; appropriations; treasurer; board of audit.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-347. Training of orphans. — The said corporation shall receive, train and care for such orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28; 1969, c. 1279.)

Editor's Note. — The 1969 amendment deleted "colored" preceding "orphan" near the beginning of the section.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 115-348. Control over orphans.

Cited in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

SUBCHAPTER XIA. COMPACT.

ARTICLE 43.

Interstate Compact for Education.

§ 115-349. Enactment of compact.—The compact for education is hereby entered into and enacted into law, with all jurisdictions legally joining therein, in the form substantially as follows:

COMPACT FOR EDUCATION

Article I. Policy and Purpose.

It is the purpose of this compact to:

(1) Establish and maintain close cooperation and understanding among

executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.

(5) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

(6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to ex-

ceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III (10).

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(7) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor and legislature of

each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction. organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation with Federal Government.

(1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and trea-

surer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

(2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

(3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

(3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III (7) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III (7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties; Entry into and Withdrawal.

(1) This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the

Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

(3) Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

(4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020.)

§ 115-350. Establishment of North Carolina Education Council.—There is hereby established the North Carolina Education Council composed of the members of the education commission of the states representing this State, and not exceeding five other persons appointed by the Governor for terms of three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this State having the responsibilities for, knowledge with respect to, and interest in educational matters. The Governor shall serve as chairman of the North Carolina Education Council or any person that the Governor may designate shall serve as chairman. The chairman of the State Board of Education, the State Superintendent of Public Instruction, the chairman of the State Board of Higher Education, and the Director of Higher Education shall be ex officio members of the North Carolina Education Council. The Council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the Council shall meet not less than three times in each year. The Council may consider any and all matters relating to the recommendations of the education commission of the states and the activities of the members in representing this State thereon. (1967, c. 1020.)

State Government Reorganization.—The administration of this compact was transferred to the Department of Public Education by § 143A-45, enacted by Session Laws 1971, c. 864.

§ 115-351. Filing copy of bylaws with Secretary of State.—Pursuant to Article III (9) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. (1967, c. 1020.)

SUBCHAPTER XII. EXPERIMENTATION AND RESEARCH.

ARTICLE 44.

North Carolina Advancement School.

§ 115-352. Continuation of North Carolina Advancement School by the State Board of Education.—The State Board of Education shall have the responsibility of operating the North Carolina Advancement School at Winston Salem as a continuing phase of and in conjunction with the public school system of North Carolina. (1967, c. 1028, s. 2.)

Editor's Note. — Session Laws 1967, c. 1028, s. 4, makes the act effective July 1, 1967.

State Government Reorganization.—The North Carolina Advancement School was transferred to the Department of Public Education by § 143A-46, enacted by Session Laws 1971, c. 864.

§ 115-353. Purpose of the North Carolina Advancement School.—The purpose of the North Carolina Advancement School is to provide a facility wherein there shall be carried on experimentation and research into the causes of and remedies for under achievement in the public schools of North Carolina. (1967, c. 1028, s. 2.)

§ 115-354. Board of governors.—The State Board of Education shall appoint and maintain for the school a governing board to be known as "the board of governors," which shall be composed of 10 citizens of the State, one of whom shall always be the superintendent of the Forsyth County-Winston Salem schools. Except for the superintendent of the Forsyth County-Winston Salem schools, the board members shall serve for terms of not more than three consecutive years. The board of governors shall select from its membership annually a chairman and vice-chairman, and such board shall meet at least four times each year upon the call of its chairman. Members of the board shall receive the same per diem and shall be reimbursed for their expenses in the same manner as other boards and commissions generally. The director of the School shall serve as secretary to the board. (1967, c. 1028, s. 2.)

§ 115-355. Responsibilities of the board of governors.—Subject to the general supervision of the State Board of Education, the board of governors shall have the responsibility for

(1) Determining the policies which shall govern the administration and supervision of the school,
(2) Observing and reviewing all phases of the school's operation, and
(3) Reporting its findings and recommendations through the Superintendent of Public Instruction to the State Board of Education. (1967, c. 1028, s. 2.)

§ 115-356. State Board of Education to appoint director.—The State Board of Education shall appoint a director of the school who shall serve for such term, which may be indefinite, as the State Board shall determine. (1967, c. 1028, s. 2.)

§ 115-357. Responsibilities of the director.—In accordance with the policies of the board of governors, the director shall have responsibility for

(1) Administering and directing all the affairs of the school,

(2) Recommending to the board of governors the number and types of positions required to staff the school,

(3) Selecting and recommending to the board of governors all personnel, including consultants to be employed or assigned to the school,

(4) The development and implementation of the curriculum of the school,

(5) Developing procedures which will insure the continuous evalution of all aspects of the school and it progress,

(6) Recommending for approval of the board of governors any rental or lease agreements affecting the facility wherein the school is located,

(7) Preparing and submitting to the State Board of Education through the board of governors the recommended budget for the operation of the school,

(8) Developing procedures and techniques which will promote the articulation and coordination of the program of the school with that of the public schools throughout the State, and

(9) Reporting periodically and systematically to the board of governors and the State Board of Education on the status of the school, and performing such other duties as the board of governors from time to time may find appropriate to his administrative position. (1967, c. 1028, s. 2.)

Cross Reference.—See Editor's note to § 115-352.

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

Article 1.

General Provisions for State Administration.

Sec.

115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.

Article 2.

Local Administration.

115A-9.1. Sale, exchange or lease of property.

Sec.

115A-14.1. Traffic regulations; fines and penalties.

Article 3.

Financial Support.

115A-20. Providing local public funds for institutions established under this Chapter; elections.

Article 5.

Special Provisions.

115A-38.1. Special provisions for Onslow County Technical Institute.

ARTICLE 1.

General Provisions for State Administration.

§ **115A-1. Statement of purpose.**—The purposes of this chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this chapter, shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools. (1963, c. 448, s. 23; 1969, c. 562, s. 1.)

Editor's Note. — The 1969 amendment added the second sentence.

§ **115A-2. Definitions.**

(2) The term "community college" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and

a. Which offers the freshman and sophomore courses of a college of arts and sciences,

b. Which shall offer organized curricula for the training of technicians,

c. Which shall offer vocational, trade, and technical specialty courses and programs, and

d. Which shall offer courses in general adult education.

(3) The term "industrial education center" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the area for which established, and

a. Which offers vocational, trade, and technical specialty courses and programs, and
b. Which shall offer courses in general adult education.

(7) The term "technical institute" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
a. Which offers organized curricula for the training of technicians,
b. Which shall offer vocational, trade, and technical specialty courses and programs, and
c. Which shall offer courses in general adult education. (1963, c. 448, s. 23; 1969, c. 562, s. 2.)

Editor's Note. — The 1969 amendment substituted "shall" for "may" throughout subdivisions (2), (3) and (7).

As the rest of the section was not changed by the amendment, only subdivisions (2) (3) and (7) are set out.

§ 115A-3. State Board of Education to establish department to administer system of educational institutions.

State Government Reorganization.—The Department of Community Colleges was transferred to the Department of Public Education by § 143A-43, enacted by Session Laws 1971, c. 864.

§ 115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; contracting, etc., for establishment and operation of extension units of community college system; use of existing public school facilities.—The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: To approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

The State Board of Education is authorized to enter into agreements with county and city boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for operating and equipping extension units as provided in this chapter for other institutions, subject to available funds.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

(1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and
(2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23; 1967, c. 652; 1969, c. 1294.)

Editor's Note.—The 1967 amendment inserted the third paragraph.

The 1969 amendment inserted "matching capital outlay and for" in the second sentence of the third paragraph.

ARTICLE 2.

Local Administration.

§ **115A-9.1. Sale, exchange or lease of property.**—When in the opinion of the board of trustees of any institution organized under the provisions of this chapter, the use of any property, real or personal, owned or held by said board of trustees is unnecessary or undesirable for the purposes of said institution, the board of trustees, subject to prior approval of the State Board of Education, may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1969, c. 338.)

§ **115A-14.1. Traffic regulations; fines and penalties.**—(a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon are hereby made applicable to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes as herein made applicable, in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System shall, upon conviction thereof, be punished as therein prescribed and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees, printed, and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such rules, regulations, or ordinances shall, upon conviction thereof in a legally constituted court of the State of North Carolina, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days or, in the discretion of the court, both such fine and imprisonment.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed five dollars ($5.00), which funds shall be retained in the institution and expended in the discretion of the trustees. The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus. (1971, c. 795, ss. 1-3.)

ARTICLE 3.

Financial Support.

§ 115A-20. Providing local public funds for institutions established under this Chapter; elections.

(f) Notwithstanding any present provisions of this Chapter, the tax levying authority of each institution may at its discretion and upon its own motion provide by appropriations of nontax revenue and/or tax revenue, funds for the support of institutional purposes as set forth in G.S. 115A-19; but nothing herein shall be construed to authorize the issuance of bonds without a vote of the people. (1963, c. 448, s. 23; 1971, c. 402.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, added subsection (f). As the rest of the section was not changed by the amendment, only subsection (f) is set out.

ARTICLE 5.

Special Provisions.

§ 115A-38.1. Special provisions for Onslow County Technical Institute.—(a) The State Board of Education shall have authority to approve the conversion of the Onslow County Industrial Education Center to a technical institute, as defined in chapter 115A of the General Statutes of North Carolina.

(b) All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution as a technical institute.

(c) The Onslow County board of education is authorized to transfer without compensation to the board of trustees of the Onslow County Industrial Education Center the title to any real and personal property held by the board of education as the two boards may agree upon, either before or after the institution is converted to a technical institute.

(d) In the event that the State Board of Education shall approve the conversion of the Onslow County Industrial Education Center to a technical institute, within sixty days after the Board grants final approval, the Governor shall appoint four additional members to the board of trustees of the Onslow County Technical Institute in accordance with the provisions of §§ 115A-7 and 115A-8 (1) of the General Statutes of North Carolina. (1967, c. 279.)

ARTICLE 6.

Textile Training School.

§ 115A-39. Creation of board of trustees; members and terms of office; no compensation.—The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479.)

Editor's Note.—

The 1969 amendment substituted "nine" for "six" in the first sentence.

State Government Reorganization. — North Carolina Vocational Textile School was transferred to the Department of Public education by § 143A-44, enacted by Session Laws 1971, c. 864.

Chapter 116.

Higher Education.

Article 1.

The University of North Carolina.

Part 1. General Provisions.

Sec.
116-4.1. President of student government made ex officio trustee.
116-11.1. North Carolina Memorial Hospital board of directors; administration of hospital.
116-20 to 116-25. [Transferred.]

Part 2. North Carolina State University at Raleigh.

116-37.1. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.

Part 3B. The University of North Carolina at Wilmington.

116-39.1. The University of North Carolina at Wilmington.

Part 3C. The University of North Carolina at Asheville.

116-39.2. The University of North Carolina at Asheville.

Part 5. Miscellaneous Provisions.

116-44.3 to 116-44.9. [Reserved.]

Article 1A.

Regional Universities.

116-44.10. Regional universities.
116-44.11. East Carolina University.
116-44.12. Appalachian State University.
116-44.13. Western Carolina University.
116-44.14. North Carolina Agricultural and Technical State University.
116-44.14A. Pembroke State University.
116-44.14B. North Carolina Central University.
116-44.14C. Elizabeth City State University.
116-44.14D. Fayetteville State University.
116-44.14E. Winston-Salem State University.
116-44.15. Designation of additional regional universities.
116-44.16. Future policy with respect to regional universities.

Article 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

Sec.
116-45.1, 116-45.2. [Repealed.]
116-46.1A. Motor vehicle laws applicable to the campus of Western Carolina University; parking regulations.
116-46.1B. Motor vehicle laws applicable to streets, alleys, and driveways on campus of Pembroke State University; university trustees authorized to adopt traffic regulations.
116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.

Article 4.

School for Professional Training in Performing Arts.

116-65. Board of Trustees to govern; appointment of members; terms; officers; title of Board; powers generally.
116-70. Applicable statutes generally; revenue bonds.
116-70.1. Other applicable statutes.

Article 14.

General Provisions as to Tuition Fees in Certain State Institutions.

116-143.1. Definitions; military status provisions.

Article 15.

Educational Advantages for Children of World War Veterans.

116-149 to 116-153. [Repealed.]

Article 16.

State Board of Higher Education.

116-157. Vice-chairman and secretary.
116-158.1. Contracts with private institutions to aid North Carolina students.
116-158.2. Scholarship and contract terms; base period.

Sec.
116-158.3. Contract forms; reports; audits; regulations.
116-158.4. Definitions applicable to §§ 116-158.1 to 116-158.3.

Article 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

116-174.2. Grounds for revocation of scholarships.

Article 20.

Motor Vehicles of Students.

116-186. Registration and regulation of motor vehicles regularly operated or maintained on campuses.

Article 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

116-187. Purpose of Article.

Article 23.

State Education Assistance Authority.

116-201. Purpose and definitions.
116-206. Acquisition of obligations.
116-209.1. Provisions in conflict.
116-209.2. Reserves.
116-209.3. Additional powers.
116-209.4. Authority to issue bonds.
116-209.5. Bond resolution.
Sec.
116-209.6. Revenues.
116-209.7. Trust funds.
116-209.8. Remedies.
116-209.9. Negotiability of bonds.
116-209.10. Bonds eligible for investment.
116-209.11. Additional pledge.
116-209.12. Credit of State not pledged.
116-209.13. Tax exemption.
116-209.14. Annual reports.
116-209.15. Merger of trust fund.
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116-209.17. Establishment of student assistance program.
116-209.18. Powers of Authority to administer student assistance program.
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116-209.21. Cooperation of the Board of Higher Education.
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Article 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

116-212. Campus of state-supported institution of higher education subject to curfew.
116-213. Violation of curfew a misdemeanor; punishment.

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-2. Consolidated University of North Carolina.

(b) Those three campuses of the University shall be designated respectively "The University of North Carolina at Chapel Hill," "North Carolina State University at Raleigh," and "The University of North Carolina at Greensboro"; and any general campus or campuses of the University hereafter established shall be designated "The University of North Carolina at .... (place name)." All statutory references to the three existing campuses of the University of North Carolina are amended to conform to the requirements of this section.

On July 1, 1965, the University of North Carolina at Charlotte shall become a campus of the University of North Carolina.

On July 1, 1969, the University of North Carolina at Wilmington shall become a campus of the University of North Carolina.

On July 1, 1969, the University of North Carolina at Asheville shall become a campus of the University of North Carolina. (1931, c. 202, s. 1; 1963, c. 448, s. 1; 1965, c. 31, s. 1; c. 213; 1969, c. 297, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, added the last two paragraphs of subsection (b).

As subsection (a) was not changed by the amendment, only subsection (b) is set out

§ 116-4. Trustees; number, election and term.—There shall be 106 trustees of the University of North Carolina, at least 10 of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in 1931 shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, 25 for terms expiring April 1, 1935, 25 for terms expiring April 1, 1937, and 25 for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. Trustees shall continue to serve until their successors are elected. The Superintendent of Public Instruction is ex officio a trustee of the University.

The members of the Board of Trustees of the University or other State institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to § 7 of article XIV of the Constitution of North Carolina. (Const., art. 9, s. 6; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; Code, ss. 2620, 2625; Rev., s. 4268; 1909, c. 432; 1917, c. 47; C. S., s. 5789; 1931, c. 202, ss. 4, 5; 1937, c. 139; 1963, c. 448, s. 18; 1971, c. 320, s. 1.)

Editor's Note.—
The 1971 amendment substituted "106" for "one hundred" in the first sentence of the first paragraph.

§ 116-4.1. President of student government made ex officio trustee.—The president of student government on each campus of the University of North Carolina shall be a member ex officio of the Board of Trustees of the University of North Carolina with the power to vote on all matters coming before the Board. (1971, c. 320, s. 2.)

§ 116-7. Filling vacancies in board.—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the General Assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section, but shall not apply to members serving in any branch of the United States armed forces or in the military forces of any of the allies of the United States nor shall the place of any member of the board of trustees be declared vacant by reason of the absence of such member because of temporary service in the government of the United States or any of its agencies. (1804, c. 647, P. R.; 1805, c. 678, s. 2, P. R.; 1873-4, c. 64, s. 3; Code, s. 2622; 1891, c. 98; Rev., ss. 4271, 4272; 1907, c. 828; C. S., s. 5791; 1943, c. 175; 1969, c. 1126.)

Editor's Note. — The 1969 amendment added at the end of the section the provision as to temporary service in the government of the United States or any of its agencies.

§ 116-11.1. North Carolina Memorial Hospital board of directors; administration of hospital.—(a) Composition.—The board of trustees of the University of North Carolina is hereby directed to create a board of directors for the North Carolina Memorial Hospital consisting of 12 members of which nine shall be appointed by the consolidated University trustees. Three members ex officio of said board shall be the University of North Carolina Vice-Chancellor for Health Sciences, University of North Carolina Vice-Chancellor for Business and Finance, and the Dean of the University of North Carolina Medical School, or successors to these offices under other titles with similar responsibilities. Nine members shall be appointed from the business and professional public-at-large, none of whom shall be trustees of the University, and, thereafter, the nine appointive members shall select one of their number to serve as chairman. Members of this board shall include, but not be limited to, persons with special competence in business management, hospital administration, and medical practice not affiliated with University faculty. Four members shall be appointed for three-year terms and five members for five-year terms. All subsequent appointments shall be for five-year terms. Board member vacancies shall be filled by the trustees for the unexpired term. The trustees may remove any member for cause. Board members, other than ex officio members, shall each receive such per diem and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally.

(b) Meetings and Powers of Board.—The board of directors shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of its chairman. The board of directors shall make rules, regulations, and policies governing the management and operation of the North Carolina Memorial Hospital, consistent with basic State statutes and procedures, to meet the goals of education, research, patient care, and community service. The board's action on matters within its jurisdiction are [is] final, except that appeals may be made, in writing, to the board of trustees with copy of appeal to the University administration. The board of directors shall elect and may remove the director of the hospital. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill, Division of Health Sciences, with respect to the provision of clinical experience for students and may also enter into formal agreements with the University of North Carolina at Chapel Hill for the provision of maintenance and supporting services needed by the hospital.

(c) Director of Hospital.—The executive head of the North Carolina Memorial Hospital shall be the director of the hospital, who shall be appointed by the board of directors to serve at its pleasure. The director shall administer the affairs of the hospital subject to the duly adopted policies, rules, and regulations of the board of directors, including the appointment, promotion, demotion, and discharge of all hospital personnel. The director of the hospital shall report to the board of directors quarterly or more often as required. The director will serve as secretary to the board of directors.

(d) Hospital Personnel.—The hospital shall establish a personnel office for personnel administration independent of the central personnel office of the University of North Carolina at Chapel Hill.

(e) Hospital Finances.—The hospital shall be subject to the provisions of the Executive Budget Act. There shall be established a hospital business and budget office to administer the budget and financial affairs of the hospital, independent of the central business and financial office of the University of North Carolina at Chapel Hill, except for cooperative reporting requirements. The director of the hospital, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. Subject to the approval of the Advisory Budget Commission: all hospital operating funds may be budgeted and disbursed through a special fund code, all hospital receipts may be deposited directly to the special fund code; and general fund appropriations for hospital support may be budgeted in a general fund code under a single purpose, "Contribution to Hospital Operations" and be transferable to the special fund operating code as receipts.

(f) Hospital Purchases.—The hospital shall be subject to all provisions of Articles 3 and 3A of Chapter 143 of the General Statutes relating to the Department of Administration, Purchase and Contract Division. There shall be established a hospital purchasing office independent of the central purchasing office of the University of North Carolina at Chapel Hill to handle all purchasing requirements of the hospital. The Purchase and Contract Division may enter into such arrangements with the hospital board of directors as the Division may deem necessary in consideration of the special requirements of the hospital for procurement of certain supplies, materials, equipments and services.

(g) Hospital Property.—The hospital board of directors shall be responsible to the University board of trustees for the maintenance, operation, and control of the hospital and its grounds. (1971, c. 762, s. 1.)

Editor's Note. — Session Laws 1971, c. 762, s. 2, makes the act effective July 1, 1971.

§ 116-15. Functions of the University.—The University of North Carolina shall provide instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and shall be the primary state-supported agency for research in the liberal arts and sciences, pure and applied. The University shall provide instruction in the branches of learning relating to agriculture and the mechanic arts, and to other scientific and to classical studies. The University shall extend its influence and usefulness as far as possible to the persons of the State who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S., s. 5837; 1963, c. 448, s. 4; 1969, c. 532, s. 2.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, deleted the former third sentence, which provided that the University should be the only institution in the State system of higher education authorized to award the doctor's degree.

§§ 116-20 to 116-25: Transferred to §§ 116A-1 to 116A-7 by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

Part 2. North Carolina State University at Raleigh.

§ 116-35. Coordinating committee of State University and Department of Agriculture created.

State Government Reorganization.—The coordinating committee of State University and the Department of Agriculture was transferred to the Department of Administration by § 143A-94, enacted by Session Laws 1971, c. 864.

§ 116-37.1. Authorization to purchase insurance in connection with construction and operation of nuclear reactors.—In connection with the construction of, assemblying of, use and operation of, any nuclear reactor now owned or hereafter acquired by it, North Carolina State University is hereby authorized and empowered to procure proper insurance against the hazards of explosion, implosion, radiation and any other special hazards unique to nuclear reactors, including nuclear fuel and all other components thereto. Further, North Carolina State University is authorized to enter into agreements with the United States Atomic Energy Commission prerequisite to licensing by that agency of nuclear reactors and to maintain as a part of such agreement or agreements appropriate insurance in amounts required by the Atomic Energy Commission of nuclear reactor licenses.

To the extent that North Carolina State University shall obtain insurance under the provisions of this section, it is hereby authorized and empowered to waive its governmental immunity from liability for damage to property or injury to death to persons arising from the assemblying, construction of, use and operation of nuclear reactors. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but only to the extent that North Carolina State University is indemnified by such insurance.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to do a business of insurance in this State except to the extent that such insurance may be furnished by or through a governmental agency created for the purpose of insuring against such hazards or through reinsurance pools or associations established to insure against such hazards.

Any person sustaining property damage or personal injury may sue North Carolina State University for damages for injury arising out of the construction, assembly, use or operation of a nuclear reactor on the campus of the University in the Superior Court of Wake County, and to the extent that the University is indemnified by insurance, it shall be no defense to any such action that the University was engaged in the performance of a governmental or discretionary function of the University. In the case of death alleged to have been caused by the assembly, construction, use or operation of such nuclear reactor, the personal representative of the deceased person may bring such action.

Nothing in this section shall in any way affect any other actions which have been or may hereafter be brought under the Tort Claims Act against North Carolina State University, nor shall the provisions of this section in any way abrogate or replace the provisions of the Workmen's Compensation Act. (1969, c. 1023.)

Part 3. The University of North Carolina at Greensboro.

§ 116-38. Operation of University of North Carolina at Greensboro.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

Part 3B. The University of North Carolina at Wilmington.

§ 116-39.1. The University of North Carolina at Wilmington.—(a) Wilmington College shall become a campus of the University of North Carolina under the designation the University of North Carolina at Wilmington on July 1, 1969, whereupon it shall cease to be subject to any of the provisions and terms of article 2, chapter 116 of the General Statutes, and shall become subject to the terms of article 1, chapter 116 of the General Statutes.

(b) The board of trustees of Wilmington College shall, on or before July 1, 1969, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title and interest of the grantor in and to the real and personal property of Wilmington College, including all endowments, executors' contracts, and unexpended State appropriations or other appropriations; New Hanover County and the city of Wilmington shall continue to be solely liable for the repayment of all indebtedness incurred by that county in aid of Wilmington College. (1969, c. 297, s. 2.)

Editor's Note.—Subsection (a) of this section is effective July 1, 1969. Subsection (b) is effective April 24, 1969.

Part 3C. The University of North Carolina at Asheville.

§ 116-39.2. The University of North Carolina at Asheville. — (a) Asheville-Biltmore College shall become a campus of the University of North Carolina under the designation the University of North Carolina at Asheville on July 1, 1969, whereupon it shall cease to be subject to the terms and provisions of article 2, chapter 116 of the General Statutes, and shall become subject to the terms of article 1, chapter 116 of the General Statutes.

(b) The board of trustees of Asheville-Biltmore College shall, on or before July 1, 1969, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title and interest of the grantor in and to the real and personal property of Asheville-Biltmore College, including all endowments, executors' contracts, and unexpended State appropriations or other appropriations; Buncombe County, the city of Asheville participating in the financial affairs of said college, shall continue to be solely liable for the repayment of all indebtedness incurred by said county and municipalities in aid of Asheville-Biltmore College, if such obligations have been heretofore contracted for and assumed. (1969, c. 297, s. 3.)

Editor's Note.—Subsection (a) of this section is effective July 1, 1969. Subsection (b) is effective April 24, 1969.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions.—As used in this Part:

(3) "Cost," as applied to a project, shall include the cost of construction (as herein defined), the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed ad- cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such construction, administrative expense and such other expenses, including reasonable provisions for initial operating expenses necessary or incident to the financing herein authorized and a reserve for debt service, and any expense incurred by the board in the issuance of bonds under the provisions of this Part in connection with any of the foregoing items of cost;

(4) "Project" means any undertaking under this Part to acquire, construct or provide service and auxiliary facilities necessary or desirable for the proper and efficient operation of the University Enterprises, either as additions, extensions, improvements or betterments to the University Enterprises or otherwise, including one or more or any combination of any system, facility, plant, works, instrumentality or other property used or useful:

a. In obtaining, conserving, treating or distributing water for domestic, industrial, sanitation, fire protection or any other public or private use;

b. For the collection, treatment, purification or disposal of sewage, refuse or wastes;

c. For the production, generation, transmission or distribution of gas, electricity or heat;

d. In providing communication facilities including telephone facilities;

e. In providing storage, service, repair and duplicating facilities;

f. In improving, extending or adding to the University Enterprises as herein defined; and

g. In providing other service and auxiliary facilities serving the needs of the students, the staff or the physical plant of the University; and including all plants, works, appurtenances, machinery, equipment and properties, both personal and real, used or useful in connection therewith;

and in the case of the telephone, electric and water systems comprising a part of the University Enterprises such additions, extensions, improvements or betterments thereof as may be necessary or desirable, in the discretion of the board, to provide service from such systems, where it may be reasonably made available, within the environs of the University, including, without limitation, areas presently served by the University Enterprises in Orange, Durham and Chatham Counties.

(1971, c. 636.)

Editor's Note.—

The 1971 amendment inserted "and a reserve for debt service" near the end of subdivision (3), deleted "at the University of

North Carolina at Chapel Hill, North Carolina" following "provide" and substituted "proper and efficient operation of the University Enterprises" for "students or staff in the operation of the University" in the opening paragraph of subdivision (4) and added all of subdivision (4) following paragraph g.

As the rest of the section was not changed by the amendment, only the introductory clause and subdivisions (3) and (4) are set out.

§ **116-41.2. Powers of board of trustees generally.**—In addition to the powers which the board now has, the board shall have the following powers subject to the provisions of this Part and subject to agreements with the holders of any revenue bonds issued hereunder:

(1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;

(2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;

(3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body until January 1, 1973, and thereafter only by the North Carolina Utilities Commission) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the board authorizing the issuance of the revenue bonds.

(4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;

(5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;

(6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the board not to be required for any public purpose by the board;

(7) To insure the payment of service charges with respect to the telephone, electric and water systems of the University Enterprises, as the same shall become due and payable, the Board may, in addition to any other remedies which it may have.

  a. Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent service charges, and

  b. At the expiration of 30 days after any such service charges become delinquent, discontinue supplying the services and facilities of such telephone, electric and water systems.

(8) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and

(9) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation,

private or public, in connection with exercising the powers vested under this Part. (1961, c. 1078, s. 2; 1971, c. 634, s. 2; c. 636.)

Editor's Note.—The first 1971 amendment added to the language in parentheses in subdivision (3) "until January 1, 1973, and thereafter only by the North Carolina Utilities Commission."

The second 1971 amendment inserted present subdivision (7) and renumbered former subdivisions (7) and (8) as (8) and (9).

Session Laws 1971, c. 634, s. 3, provides: "In order to provide a period for the development by the University of North Carolina at Chapel Hill of records of the kind which may be required by the North Carolina Utilities Commission, the Utilities Commission shall have no authority in respect to the rates or service charges for the telephone service, electricity or water supplied to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9) until January 1, 1973."

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1969, shall not exceed three million five hundred thousand dollars ($3,500,000); provided, further, the board shall have authority to issue revenue bonds under this section in an additional aggregate principal amount not to exceed three million five hundred thousand dollars ($3,500,000.00) during the biennium ending June 30, 1971; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1973, shall not exceed thirteen million dollars ($13,000,000). The bonds shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, and shall bear interest at such rate or rates as may be determined by the board, and may be made redeemable before maturity at the option of the board at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Part or any recitals in any bonds issued under the provisions of this Part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this Part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Part.

Revenue bonds issued under the provisions of this Part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2; 1967, c. 724; 1969, c. 1236; 1971, c. 636.)

Editor's Note.—

The 1967 amendment substituted "1969" for "1967" in the first sentence.

The 1969 amendment added the proviso at the end of the first sentence and increased the maximum interest rate from six percent to seven and one-half percent.

The 1971 amendment added the third proviso to the first sentence and deleted "not exceeding seven and one-half per centum (7.5%) per annum" following "rate or rates" near the beginning of the second sentence of the first paragraph and deleted, at the end of the last sentence of the first paragraph, a provision to the effect that no sale should be made at a price so low as to require the payment of the interest at a rate of more than 7.5 percent per annum.

Session Laws 1971, c. 635, effective July 1, 1971, authorizes an additional $13,000,000 in revenue bonds for specific purposes.

Part 5. Miscellaneous Provisions.

§ 116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.

(b) The Board of Trustees of the University of North Carolina is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campuses not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days.

The Board of Trustees may authorize its executive committee to exercise all powers conferred on the Board by this subsection.

(1969, c. 1011; 1971, c. 361.)

Editor's Note. — The 1969 amendment added the second sentence of subsection (b).

The 1971 amendment added the second paragraph of subsection (b).

As the rest of the section was not

changed by the amendments, only subsection (b) is set out.

Opinions of Attorney General. — Mr. J.D. Wright, Business Manager, N.C. State University at Raleigh, 9/5/69.

§§ 116-44.3 to 116-44.9: Reserved for future codification purposes.

ARTICLE 1A.

Regional Universities.

§ 116-44.10. Regional universities.—(a) There shall be, in addition to The University of North Carolina as provided for in article 1 of this chapter, one or more regional universities, which shall be so designated by or pursuant to this article.

(b) The regional universities shall provide undergraduate and graduate instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and said regional universities shall provide for research in the liberal arts and sciences, pure and applied. The regional universities shall provide other undergraduate and graduate programs of instruction as are deemed necessary to meet the needs of their constituencies and of the State. Regional universities insofar as possible shall extend their educational activities to all persons of the State who are unable to avail themselves of their advantages as resident students by means of extension courses, by lectures, and by such other means and methods as may seem to the boards of trustees and administrative officers as most effective. The president and professors of each regional university shall have the power of conferring all such degrees or marks of distinction as are conferred by colleges or universities, including the doctor's degree. All degree programs or marks of distinction offered or conferred by a regional university shall be offered or conferred by and with the consent of the board of trustees of the university and subject to the approval of the North Carolina Board of Higher Education and in any case doctoral programs shall not be offered before the completion of the study on the role of regional universities as required by G.S. 116-44.16, and consistent with appropriations made therefor.

(c) Each regional university shall have a board of trustees, president, and endowment fund which shall in all respects correspond to the board of trustees, president, and endowment fund as provided for in G.S. 116-46, with the substitution of the word "university" for the word "college" where appropriate.

(d) The provisions of G.S. 116-46.2 shall apply to each regional university.

(e) Upon the effective date of the redesignation of any college as a regional university by or pursuant to this article:

(1) The members of the board of trustees and the officers of the institution shall continue in office for the remainder of their unexpired terms;

(2) All references to that institution in statutes, contracts, and other legal documents, are amended to incorporate the new name of the institution;

(3) Title to all assets and the duties imposed by all obligations of the institution under its former name shall continue unimpaired as assets and obligations of the redesignated institution. (1967, c. 1038; 1969, c. 532, s. 1.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote subsection (b).

§ 116-44.11. East Carolina University.—Effective July 1, 1967:

(1) East Carolina College is redesignated "East Carolina University," subject to the provisions of § 116-44.10 as herein set forth.

(2) In all other statutes, the words "East Carolina College" are amended to read "East Carolina University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amendment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ **116-44.12. Appalachian State University.**—Effective July 1, 1967:

(1) Appalachian State Teachers College is redesignated "Appalachian State University," subject to the provisions of § 116-44.10 as herein set forth

(2) In all other statutes, the words "Appalachian State Teachers College" are amended to read "Appalachian State University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amendment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ **116-44.13. Western Carolina University.**—Effective July 1, 1967:

(1) Western Carolina College is redesignated "Western Carolina University," subject to the provisions of § 116-44.10 as herein set forth.

(2) In all other statutes, the words "Western Carolina College" are amended to read "Western Carolina University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that amendments be made in the caption of article 2 of chapter 116 and in § 116-45, and a subdivision (3), directing that an amendment be made in § 116-46.3. Since the amendments have been made as directed by these subdivisions, they are not set out herein, and original subdivision (4) has been renumbered subdivision (2).

§ **116-44.14. North Carolina Agricultural and Technical State University.**—Effective July 1, 1967:

(1) Agricultural and Technical College of North Carolina is redesignated "North Carolina Agricultural and Technical State University," subject to the provision of § 116-44.10 as herein set forth.

(2) In all other statutes and captions thereof, the words "Agricultural and Technical College of North Carolina" are amended to read "North Carolina Agricultural and Technical State University." (1967, c. 1038.)

Editor's Note.—This section as enacted contained a subdivision (2), directing that an amendment be made in § 116-46.3. Since the amendment has been made as directed by the subdivision, it is not set out herein, and original subdivision (3) has been renumbered subdivision (2).

§ **116-44.14A. Pembroke State University.**—Notwithstanding any other provision of law, Pembroke State College is hereby redesignated as "Pembroke State University," subject to the provisions of § 116-44.10. Pembroke State University shall be subject to all the laws and provisions of laws applicable to regional universities. (1969, c. 388.)

Editor's Note.—The act adding this section is effective July 1, 1969.

§ **116-44.14B. North Carolina Central University.**—Effective July 1, 1969:

(1) North Carolina College at Durham is redesignated "North Carolina Central University," and is made subject to the provisions of § 116-44.10.

(2) In all other statutes and titles or captions thereof, the words "North Carolina College at Durham" and the words "North Carolina College of Durham" are amended to read "North Carolina Central University." (1969, c. 608, s. 1.)

§ **116-44.14C. Elizabeth City State University.** — Effective July 1, 1969:

(1) Elizabeth City State College is redesignated "Elizabeth City State University," and is made subject to the provisions of § 116-44.10.

(2) In all other statutes and titles or captions thereof, the words "Elizabeth City State College" are amended to read "Elizabeth City State University." (1969, c. 801, s. 2.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ **116-44.14D. Fayetteville State University.**—Effective July 1, 1969:

(1) Fayetteville State College is redesignated "Fayetteville State University," and is made subject to the provisions of § 116-44.10.

(2) In all other statutes and titles or captions thereof, the words "Fayetteville State College" are amended to read "Fayetteville State University." (1969, c. 801, s. 3.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ **116-44.14E. Winston-Salem State University.** — Effective July 1, 1969:

(1) Winston-Salem State College is redesignated "Winston-Salem State University," and is made subject to the provisions of § 116-44.10.

(2) In all other statutes and titles or captions thereof, the words "Winston-Salem State College" are amended to read "Winston-Salem State University." (1969, c. 801, s. 4.)

Editor's Note.—Session Laws 1969, c. 801, s. 9, makes the act effective July 1, 1969.

§ **116-44.15. Designation of additional regional universities.** — The board of trustees of any college that operates under the provisions of article 2 of this chapter and that for at least 10 years has been authorized to grant the master's degree, and is also subject to the provisions of G.S. 116-46.3, may apply to the Board of Higher Education, requesting the redesignation of that college as a regional university pursuant to this article. After making such study as it may find necessary, the Board of Higher Education shall make a report to the next regular session of the General Assembly, setting forth its findings and recommendations on the requested redesignation. The General Assembly thereupon shall make such disposition of the matter as it shall deem appropriate; provided, however, that this section shall not prevent any college designated under article 2 of this chapter from applying for any program of affiliation, change in status or other reorganization program, not inconsistent with the provisions of this article. (1967, c. 1038.)

§ **116-44.16. Future policy with respect to regional universities.**— Not later than July 1, 1972, the State Board of Higher Education pursuant to this article shall study the effectiveness of the regional universities and their proper future role and status in the State system of public higher education, and shall make a report to the General Assembly setting forth its findings and recommendations on that subject. The study shall include, but not be limited to, consideration of the continuation of the existing arrangements, the establishment of a single board of trustees for all regional universities, and the conversion of one or more of the regional universities into campuses of the University of North Carolina. (1967, c. 1038.)

ARTICLE 2.

Western Carolina University, East Carolina University, Appalachian State University, North Carolina Agricultural and Technical State University.

§ 116-45. Primary purpose of named institutions.

(1): Repealed by Session Laws 1967, c. 1038.
(2): Repealed by Session Laws 1969, c. 388, effective July 1, 1969.
(3): Repealed by Session Laws 1969, c. 608, s. 2, effective July 1, 1969.
(5): Repealed by Session Laws 1969, c. 801, ss. 5, 6, effective July 1, 1969.
(6): Repealed by Session Laws 1969, c. 297, s. 5, effective July 1, 1969.
(1957, c. 1142; 1963, cc. 421, 422; c. 448, s. 21; c. 507; 1965, c. 31, s. 3; c. 1096, s. 6½; 1967, c. 1038; 1969, cc. 130, 131; c. 297, s. 5; c. 388; c. 608, s. 2; c. 801, ss. 5, 6.)

Editor's Note.—

The 1967 amendment deleted "Appalachian State Teachers College," "East Carolina College" and "Western Carolina College" in the caption to this article and in the first sentence of subdivision (1) of this section. Since the subdivision applied only to those three institutions, the effect of the 1967 act was to eliminate the subdivision.

Prior to its repeal subdivision (2) had been previously amended by Session Laws 1969, c. 131.

Prior to its repeal, subdivision (5) had been amended by Session Laws 1969, c. 130.

Session Laws 1969, c. 297, s. 5, effective July 1, 1969, deleted "Asheville-Biltmore College" and "Wilmington College" in the caption to this article and repealed subdivision (6), relating to Asheville-Biltmore College and Wilmington College.

Session Laws 1969, c. 388, effective July 1, 1969, deleted "Pembroke State College" in the caption to this article and repealed subdivision (2), relating to Pembroke State College.

Session Laws 1969, c. 608, s. 2, effective July 1, 1969, repealed subdivision (3), relating to North Carolina College of Durham.

Session Laws 1969, c. 801, effective July 1, 1969, struck "Elizabeth City State College, Fayetteville State College, Winston-Salem State College" from the caption to this article and repealed subdivision (5) of this section, relating to those three colleges. It also repealed Session Laws 1969, c. 130, which had rewritten former subdivision (5).

As subdivision (4) was not affected by the amendments, it is not set out.

§ 116-45.1: Repealed by Session Laws 1969, c. 801, s. 7, effective July 1, 1969.

§ 116-45.2: Repealed by Session Laws 1969, c. 297, s. 6, effective July 1, 1969.

§ 116-46. Provisions common to all named institutions.—The following provisions shall be common to all the institutions hereinbefore named:

(1) Members of Board of Trustees; Number, Terms and Appointment.

a. The Board of Trustees of the institution shall consist of 13 persons, 12 of whom shall be appointed for terms of eight years each, beginning July 1 of an odd-numbered year, the terms to be staggered so that three vacancies occur every two years.

b. The president of the student government at each institution shall be a member ex officio of the Board of Trustees with the power to vote on all matters coming before the Board. Appointments of other members of the Board shall be made so as to provide eight-year terms staggered so that three vacancies shall occur every two years.

c. In the case of the North Carolina Agricultural and Technical State University, which has at present more than 12 trustees, vacancies as they occur shall not be filled until the Board of

Trustees shall be reduced to the required number of 12 members as herein provided.

d. With the exception of the ex officio member, the Governor shall make all appointments to each Board of Trustees, subject to the confirmation of the General Assembly in joint session assembled.

(1967, c. 1038; 1971, c. 320, s. 3.)

Editor's Note.—

The 1967 amendment substituted "North Carolina Agricultural and Technical State University" for "Agricultural and Technical College of North Carolina."

The 1971 amendment substituted "13" for "twelve" and inserted "12 of whom shall be" in paragraph a, rewrote paragraph b and added "With the exception of the ex officio member" at the beginning of paragraph d and deleted "of said" preceding "Board of Trustees" in paragraph d, all in subdivision (1).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivision (1) are set out.

§ 116-46.1A. Motor vehicle laws applicable to the campus of Western Carolina University; parking regulations.—(a) All of the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, roads, alleys and driveways on the campus of Western Carolina University. Any person violating any of the provisions of said Chapter 20 of the General Statutes, as herein made applicable, in or on the streets, roads, alleys or driveways on the campus of Western Carolina University shall, upon conviction thereof, be punished as therein prescribed and as provided by Chapter 20 of the General Statutes, relating to motor vehicles. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, roads, alleys and driveways on the campus of Western Carolina University as is now vested by law in the Board of Trustees of Western Carolina University.

(b) The Board of Trustees of Western Carolina University is authorized and empowered to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, roads, alleys and driveways on the campus of Western Carolina University, and to establish parking areas on the said campus not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. All regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the Board of Trustees, printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any of such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days or, in the discretion of the court, both such fine and imprisonment.

(c) The Board of Trustees of Western Carolina University may by regulation or ordinance provide for a system of registration of all motor vehicles where the owner of said motor vehicle intends and does park same in the parking places or assigned parking places on the campus of Western Carolina University or the owner keeps said vehicle on the campus of Western Carolina University. The Board of Trustees of Western Carolina University may by regulation or ordinance establish a system of citations that may be issued to owners of motor vehicles who park their vehicles on the campus of said University in violation of the traffic or parking regulations as established by law or regulation. The Board of Trustees of Western Carolina University may by regulation or ordinance provide that the administrative officers or the student government or a combination thereof may administer said system of citations and exercise the right to prohibit repeated violators of such ordinances and regulations from parking on the campus or using the parking facilities thereof.

(d) The Board of Trustees of Western Carolina University is hereby authorized to impose certain charges or penalties for violations of the traffic rules and regulations on the campus of Western Carolina University, as follows:

(1) For illegal parking or parking overtime a penalty or charge of not less than one dollar ($1.00) nor more than five dollars ($5.00) for each offense;

(2) For failing to register a vehicle using the campus parking system or for causing a vehicle to be improperly registered a charge or penalty of not less than one dollar ($1.00) nor more than ten dollars ($10.00) for each offense;

(3) For speeding in excess of regulations imposed by the Board of Trustees which is lower than designated by the provisions of G.S. 20-141 and subsections thereunder, a fine may be imposed of not less than one dollar ($1.00) nor more than ten dollars ($10.00) for each offense; and in addition thereto for a violation of (1) above said vehicle may be towed away at the owner's expense, not to exceed, however, ten dollars ($10.00) for each offense; and as a further penalty for violating (1), (2), or (3) hereof the car may be expelled from the campus and the owner or user thereof may not again park any car on said campus;

(4) The Board of Trustees may enact and pass additional regulations giving notification to car owners or users, holding hearings if requested, including the right to determine the guilt or innocence of all violators of these regulations, or it may delegate this authority, including any part or all authority contained in this section, to persons, committees, or organizations which, in its discretion, it deems appropriate. All determinations and findings by the Board of Trustees or its appropriately delegated representatives shall be final. (1969, c. 853; 1971, c. 1132.)

Editor's Note. — The 1971 amendment added subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 116-46.1B. Motor vehicle laws applicable to streets, alleys, and driveways on campus of Pembroke State University; university trustees authorized to adopt traffic regulations.—(a) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of the Pembroke State University. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Pembroke State University as is now vested by law in the trustees of Pembroke State University or Town of Pembroke.

(b) The board of trustees of Pembroke State University is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of Chapter 20, General Statutes of North Carolina, and the ordinances of the Town of Pembroke, as in its opinion may be necessary. Provided, however, that, based upon a traffic and engineering investigation, the board of trustees may determine and fix speed limits on streets and highways subject to such rules, regulations and ordinances lower than those provided in G.S. 20-141, and the board of trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of other rules, regulations and ordinances. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of Pembroke State University shall cause to be posted at appropriate places on the campus of Pembroke State University notice to the public of applicable speed limits and parking laws and ordinances. (1971, c. 839.)

§ 116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.—Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina University, North Carolina Central University, North Carolina Agricultural and Technical State University, Appalachian State University, and Western Carolina University, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the masters degree for the education of superintendents, assistant superintendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632; 1967, c. 1038; 1969, c. 114, s. 1; c. 608, s. 1.)

Editor's Note. — The 1967 amendment deleted "East Carolina College," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "Western Carolina University" for "Western Carolina College" and inserted "North Carolina Agricultural and Technical State University" all in the first sentence.

The first 1969 amendment inserted "East Carolina University" in the first sentence.

Section 3, c. 114, Session Laws 1969, provides that the act shall be in full force and effect retroactively from and after the 30th day of June, 1967.

The second 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College of Durham."

§ 116-46.4. School of medicine authorized at East Carolina University; meeting requirements of accrediting agencies.—The board of trustees of East Carolina University is hereby authorized to create a school of medicine at East Carolina University, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association. The Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2; 1967, c. 1038.)

Editor's Note.—

The 1967 amendment substituted "East Carolina University" for "East Carolina College."

ARTICLE 4.

School for Professional Training in Performing Arts.

§ 116-65. Board of Trustees to govern; appointment of members; terms; officers; title of Board; powers generally.—The school shall be governed by a Board of Trustees consisting of 12 members, appointed by the Governor, who will serve terms of six years, except that, of the first Board of Trustees appointed pursuant to this Article, four members of the said Board of Trustees shall serve for terms of six years, four members shall serve for terms of four years, and four members shall serve for terms of two years, with all terms to commence on July 1 of the year in which the members shall be appointed. The conductor of the North Carolina Symphony and the president of the student government shall be ex officio members of the Board of Trustees with power to vote on all matters coming before the Board. In the event of a vacancy arising, the Governor shall appoint a member to fill the vacancy for the unexpired term.

The Board of Trustees shall elect annually from their number a chairman and a vice-chairman. The Board shall also elect a secretary and a treasurer, who may, but need not be, a member of the Board of Trustees, and the offices of secretary and treasurer may be held by the same person. The meeting for the election of officers shall be held not earlier than July 1 and not later than September 1 of each year. Officers shall be elected to serve for terms of one year, and until their successors are elected and qualified. The Board of Trustees shall be known as "The Trustees of ...." (here insert name of school) and shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the school, and for carrying out the provisions and purposes of this Article. (1963, c. 1116; 1971, c. 320, s. 4.)

Editor's Note.—The 1971 amendment inserted "and the president of the student government" and substituted "ex officio members" for "an ex officio member" in the second sentence of the first paragraph and added "with power to vote on all matters coming before the Board" at the end of that sentence.

§ 116-70. Applicable statutes generally; revenue bonds.—The school is hereby declared to be a state-supported institution of higher learning within the meaning of article 21 of chapter 116 of the General Statutes of North Carolina, the same as if the school were enumerated in said article 21 or in G.S. 116-45, and all of the provisions of said article 21 are hereby made applicable to the school and its board of trustees.

In addition to the powers conferred thereon by this section and G.S. 116-66, the board of trustees, subject to the approval of the Advisory Budget Commission, is hereby authorized to issue from time to time revenue bonds of said board for the purpose of providing funds, with any other available funds, for acquiring dormitory facilities presently being leased by the school. (1967, c. 1040, s. 1.)

Editor's Note. — The 1967 amendment renumbered former § 116-70 as § 116-71 but since a § 116-71 had been added by Session Laws 1965, c. 1148, s. 1, former § 116-70 has been designated § 116-70.1 herein.

Session Laws 1967, c. 1040, s. 2, provides: "The powers conferred by this act shall be regarded as supplemental and in addition to powers conferred by all other laws and shall not supplant or repeal any powers conferred by any other law."

§ 116-70.1. Other applicable statutes. — All of the powers, duties and responsibilities herein conferred shall be subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "Executive Budget Act," and article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1116; 1967, c. 1040, s. 3.)

Cross Reference.—See Editor's note to § 116-70.

Editor's Note.—Article 2, Chapter 143, referred to in this section, was repealed by Session Laws 1965, c. 640, s. 1. For present provisions as to State Personnel System, see §§ 126-1 to 126-12.

ARTICLE 14.

General Provisions as to Tuition Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition fees.—Each of the board of trustees of the several institutions of higher education provided for in Articles 1, 2, and 3 of Chapter 116 shall fix the tuition and fees for the institution or institutions under its control, in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each board shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term; provided, however, that the General Assembly may from time to time prescribe the tuition or the fees, or set ranges for the tuition or the fees, or delegate the setting of tuition or fees to the board of higher education or other State agency.

Each board of trustees shall require that each applicant for admission who is accepted by the institution remit to the institution an advance deposit of not less than one hundred dollars ($100.00) to be applied against the student's tuition and fees for the academic term for which he has been accepted, said sum to be paid within three weeks of the mailing by the institution of the notice of acceptance; if the deposit is not paid within said period the applicant shall be assumed to have withdrawn his application. In the event of hardship, the deposit may be waived by the institution in its discretion. If the applicant, after remitting his deposit, decides not to attend the institution and gives notice of this decision by May 1, in the case of application for the fall term, or at least one month prior to the beginning of the term, in the case of application for the spring or winter term, the deposit shall be refunded. Deposits made by students who fail to give notice of withdrawal to the institution as provided above shall be forfeited to the institution and shall be used to supplement appropriations for scholarships; provided, however, that any deposit shall be refundable if in the judgment of the institution the withdrawal of an applicant is the result of illness, a call to military duty or other circumstances which are beyond the student's control and which the institution deems adequate.

Each board of trustees shall require that an advance deposit of fifty dollars ($50.00) be made by each student enrolled for the regular academic year who intends to return for the succeeding academic year. The fee shall be paid during the last regular term of the academic year preceding the academic year for which the deposit is being paid. In the event of hardship, the deposit may be waived by the institution in its discretion. The deposit shall be applied against the student's tuition and fees in the event he returns. If he decides not to return to the institution and gives notice of his decision within 30 days after the last day of the term in which he made the deposit, or if the institution determines that he is not eligible to return, the deposit shall be refunded. Deposits made by students who fail to give notice of withdrawal as provided above shall be forfeited to the institution and shall be used to supplement appropriations for scholarships; provided, however, that any deposit shall be refundable if in the judgment of the institution the withdrawal of an applicant is the result of illness, a call to military duty or other circumstances which are beyond the student's control and which the institution deems adequate.

Each board of trustees shall require that a nonrefundable application fee of ten dollars ($10.00) accompany each application for admission.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except where expressly authorized by statute; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Where an individual is participating in an interstate regional training program approved by the Southern Regional Education Board, or in the Appalachian Regional Commission program, or in the Coastal Plains Regional Commission program, or any other limiting federally-funded program, or where an individual is solicited for a special talent and is thereby awarded a scholarship, fellowship or assistantship, a special tuition rate not lower than the North Carolina resident rate may be granted in the discretion of the board of trustees of the institution. No special tuition rate may be granted to an individual serving exclusively as a faculty member on a part-time basis and who is enrolled at the same time as a part-time student; provided, however, that the Advisory Budget Commission is hereby authorized to modify this provision to alleviate justifiable budget difficulties in the affected institutions during the 1971-73 biennium.

Notwithstanding the above provision relating to the abolition of free tuition, the said boards of trustees of the institutions of higher education provided for in Articles 1 and 2 of Chapter 116 may, in their discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member, may during the period of normal employment enroll for courses in their respective institutions free of charge for tuition, provided such enrollment does not interfere with normal employment obligations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2.)

Editor's Note.—

The first 1971 amendment added the proviso at the end of the first paragraph and rewrote the present seventh paragraph.

The second 1971 amendment, effective Oct. 1, 1971, added the second, third and fourth paragraphs.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 116-143.1. Definitions; military status provisions.—(a) A nonresident shall be any person not qualifying for in-state tuition as hereinafter defined.

(b) To qualify for in-state tuition, a legal resident must have maintained his domicile in North Carolina for at least the 12 months next preceding the date of first enrollment or re-enrollment in an institution of higher education in this State. Student status in an institution of higher learning in this State shall not constitute eligibility for residence to qualify said student for in-state tuition.

(c) No person shall lose his in-state resident status by serving in the armed forces outside of the State of North Carolina. (1971, c. 845, ss. 7-9.)

§ 116-144. Higher fees from nonresidents may be charged.

Editor's Note. — Session Laws 1971, c. 845, ss. 1 to 5, set the rates for nonresident tuition at various institutions for Sept. 1971, and thereafter.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ 116-149, 116-149.1: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

§ 116-150: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

Editor's Note.—

Session Laws 1967, c. 1060, s. 9, effective July 1, 1967, provides: "Those persons who have been granted a scholarship under the proviso of G.S. 116-150, as the same appears in 1966 Replacement Volume 3A of the General Statutes, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in Class I-B, as that class is defined in G.S. 165-22 (a)(2) [subdivision (2) of G.S. 165-22]. All other persons who have been granted a scholarship under G.S. 116-150, as the same appears in the 1966 Replacement Volume 3A of the General Statutes, excluding those covered by the proviso referred to in the preceding sentence, and who attend a State educational institution on or after July 1, 1967, shall be entitled for the remainder of their period of scholarship eligibility to those benefits now provided for in G.S. 165-21."

§§ 116-151 to 116-153: Repealed by Session Laws 1967, c. 1060, s. 10, effective July 1, 1967.

ARTICLE 16.

State Board of Higher Education.

§ 116-156. Membership; appointment, term and qualifications; vacancies.—The Board shall consist of twenty-two citizens of North Carolina, one of whom shall be a member of the State Board of Education to be appointed by the Governor, eight of whom shall be appointed by the Governor to represent the public at large, but none of whom shall be officers or employees of the State, or officers, employees or trustees of the institutions of higher education, four of whom shall be selected by the boards of trustees of state-supported senior colleges, and two of whom shall be selected by the board of trustees of the University, provided, no trustee member shall be a member of the General Assembly. The Governor shall serve ex officio as a member and as chairman of the Board. The six persons who are the chairmen of the committees on appropriations, finance and higher education in the Senate and House of Representatives shall serve ex officio as members of the Board The four senior colleges, whose trustees shall select one of their members as a Board member to serve for a two-year term, shall be selected by the Governor in such order of rotation as he may choose every two years; provided, that the right of selection of such Board member shall be rotated among all institutions equally.

Members of the Board other than the six selected by the trustees of institutions and the ex officio members shall be appointed by the Governor for terms of six years, except that of the first Board appointed, three members shall serve for two years, three shall serve for four years and three for six years. Terms of all members of the first Board so selected shall commence July 1, 1965. The term of each of the six ex officio members from the General Assembly shall commence with his appointment to the committee chairmanship and shall continue until his successor as committee chairman has been appointed.

All memberships, except ex officio memberships, shall be subject to confirmation by the House of Representatives and the Senate in joint session assembled. The Governor shall forward all appointments to the General Assembly before the fortieth legislative day of each regular session. The Governor shall, without such confirmation, appoint members to fill vacancies for unexpired terms.

Appointees to the Board shall be selected for their interest in and ability to contribute to the fulfillment of the purpose of the Board. All members of the Board shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. (1955, c. 1186, s. 3; 1965, c. 1096, s. 2; 1969, c. 400, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted "twenty-two" for "fifteen" near the beginning of the first sentence of the first paragraph, added the second and third sentences of the first paragraph, inserted, in the first sentence of the second paragraph, "and the ex officio members," added the last sentence of the second paragraph and rewrote the first and second sentences of the third paragraph.

§ 116-157. Vice-chairman and secretary. — The Board shall elect annually from among its members a vice-chairman and a secretary. (1955, c. 1186, s. 4; 1969, c. 400, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, deleted "chairman" preceding "vice-chairman."

§ **116-158. Powers and duties generally.**—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of Article 1, Chapter 143 of the General Statutes except as herein otherwise provided:

(1) The primary function of the Board of Higher Education shall be to plan and coordinate the major educational functions and activities of higher education in the State and to allot the functions and activities of the institutions of higher education in addition to the purposes specified in Articles 1 and 2 of Chapter 116 of the General Statutes. No public senior educational institution shall request from the General Assembly, the Advisory Budget Commission or any other State agency approval of, or funding for, any new degree program or educational function or activity until the same has been approved by the board of trustees of the institution and acted upon, in accordance with regularly established procedures, by the Board of Higher Education. The Board shall give the Governor, the General Assembly and the various institutions advice on higher education policy and problems.

(9) The Board, with the cooperation of other concerned organizations, shall establish, as a function of the Board, an Educational Opportunities Information Center to provide information and assistance to prospective college and university students and to the several institutions, both public and private, on matters regarding student admissions, transfers and enrollments. The public institutions shall cooperate with the Center by furnishing such nonconfidential information as may assist the Center in the performance of its duties. Similar cooperation shall be requested of the private institutions in the State.

An applicant for admission to an institution who is not offered admission may request that the institution send to the Center appropriate nonconfidential information concerning his application. The Center may, at its discretion and with permission of the applicant, direct the attention of the applicant to other institutions and the attention of other institutions to the applicant. The Center is authorized to conduct such studies and analyses of admissions, transfers and enrollments as may be deemed appropriate. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7; 1965, c. 1096, s. 3; 1969, c. 532, s. 3; 1971, c. 1086, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, rewrote the second sentence of subdivision (1).

The 1971 amendment, effective Oct. 1, 1971, added subdivision (9).

As the rest of the section was not affected by the amendment, only the introductory language and subdivisions (1) and (9) are set out.

§ **116-158.1. Contracts with private institutions to aid North Carolina students.**—In order to encourage and assist private institutions to continue to educate North Carolina students, the Board of Higher Education is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Higher Education would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Higher Education and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated. (1971, c. 744, s. 1.)

§ **116-158.2. Scholarship and contract terms; base period.**—In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Higher Education is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Higher Education would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1970, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Higher Education and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-158.1, students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students may not also be counted under G.S. 116-158.1, for the purpose of calculating payment to be made under that section. (1971, c. 744, s. 2.)

§ **116-158.3. Contract forms; reports; audits; regulations.** — The Board of Higher Education is authorized to prescribe the form of the contracts to be executed under G.S. 116-158.1 and 116-158.2, to require of the institutions such reports, statements and audits as the Board may deem necessary or desirable in carrying out the purposes of G.S. 116-158.1 through 116-158.4 and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of G.S. 116-158.1 through 116-158.4. (1971, c. 744, s. 3.)

§ **116-158.4. Definitions applicable to** §§ **116-158.1 to 116-158.3.**—As used in G.S. 116-158.1 through 116-158.4:

(1) "Institution" shall mean an educational institution located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof; that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of said Association and that is not a seminary, Bible school, Bible college or similar religious institution.

(2) "Student" shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the North Carolina Board of Higher Education and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Higher Education may promulgate. The enrollment figures required by G.S. 116-158.1 through 116-158.4 shall be the number of full-time-equivalent students as computed under regulations prescribed by the Board of Higher Education. (1971, c. 744, s. 4.)

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.—All minors in North Carolina of the age of seventeen years and upwards shall have full power and authority to enter into written contracts of indebtedness, at a rate of interest not exceeding the contract rate authorized in chapter 24 of the General Statutes, with persons and educational institutions or with firms and corporations licensed to do business in North Carolina and to execute notes evidencing such indebtedness. Such loans shall be:

(1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;

(2) For the sole purpose of borrowing money to obtain post-secondary education at an accredited college, university, junior college, community college, technical institute, industrial education center, business or trade school provided, however, that none of the proceeds of such loans shall be used to pay for any correspondence courses;

(3) The proceeds of any loan shall be disbursed either directly to the educational institution for the benefit of the borrower or jointly to the borrower and the educational institution. (1963, c. 780; 1969, c. 1073.)

Editor's Note. — The 1969 amendment rewrote this section.

Quoted in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 116-174.2. Grounds for revocation of scholarships.—Any student regularly registered and enrolled as an undergraduate, graduate, or professional student in a state-supported college, university or community college who shall be convicted, enter a plea of guilty or nolo contendere upon an indictment or charge for engaging in a riot, inciting a riot, unlawful demonstration or assembly, seizing or occupying a building or facility, sitting down in buildings they have seized, or lying down in entrances to buildings or any facilities, or on the campus of any college, university, or community college, or any student, whether an undergraduate, graduate or professional student who shall forfeit an appearance bond on an indictment or charge of any of the above-named offenses, shall have revoked and withdrawn from his benefit all state-supported scholarships or any State funds granted to him for educational assistance. It shall be the duty of all persons or officials having charge of and authority over the granting of state-supported scholarships or any other form of financial assistance to immediately revoke and withdraw same in the event and upon the happening of any of the conditions or matters above enumerated; provided, however, that in subsequent academic terms any such student shall be eligible to be considered for and to be granted financial assistance from State funds. (1969, c. 1019.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

(1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, North Carolina Agricultural and Technical State University, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Central University, Pembroke State University, Western Carolina University, and Winston-Salem State University.

(1967, c. 1038; 1969, c. 297, s. 7; c. 388; c. 608, s. 1; c. 801, ss. 2-4.)

Editor's Note.—

The 1967 amendment substituted "North Carolina Agricultural and Technical State University" for "Agricultural and Technical College of North Carolina," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "East Carolina University" for "East Carolina College," and substituted "Western Carolina University" for "Western Carolina College" in subdivision (1).

The first 1969 amendment, effective July 1, 1969, deleted "Asheville-Biltmore College and Wilmington College" at the end of subdivision (1).

The second 1969 amendment, effective July 1, 1969, substituted "Pembroke State University" for "Pembroke State College" in subdivision (1).

The third 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College at Durham" in subdivision (1).

The fourth 1969 amendment, effective July 1, 1969, substituted "Elizabeth City State University" for "Elizabeth City State College," "Fayetteville State University" for "Fayetteville State Teachers College" and "Winston-Salem State University" for "Winston-Salem State College" in subdivision (1).

As the rest of the section was not changed by the amendments, only subdivision (1) is set out.

§ 116-176. Issuance of bonds.—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this Article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this Article.

Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

The board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds. (1957, c. 1131, s. 2; 1969, c. 1158, s. 1; 1971, c. 511, s. 1.)

Editor's Note. — The 1969 amendment substituted "eight per centum (8%)" for "five per centum (5%)" in the second and last sentences of the first paragraph.

The 1971 amendment added the last paragraph.

ARTICLE 20.

Motor Vehicles of Students.

§ 116-186. Registration and regulation of motor vehicles regularly operated or maintained on campuses.—The board of trustees of each institution enumerated in Articles 1, 2 and 3 of this Chapter may adopt reasonable rules and regulations governing the registration and operation on the campus of the institution of motor vehicles regularly maintained or operated thereon by any persons, including students, faculty, staff, and others. In connection with registration, the board of trustees may charge a registration fee. These fees shall be placed in a special fund at each institution to be used to develop, maintain, and supervise parking areas and facilities and traffic control. No fee may be charged for registration of vehicles operated by physically handicapped persons. (1961, c. 1192; 1963, cc. 421, 422; 1965, c. 31, s. 3; 1971, c. 794.)

Editor's Note.—

The 1971 amendment rewrote this section, making it applicable to all motor vehicles regularly maintained or operated on the campus, rather than only to those maintained and operated by students, and making other changes.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ **116-187. Purpose of Article.**—The purpose of this Article is to authorize the boards of trustees of the educational institutions designated herein to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at said institutions, housing of faculty, adult or continuing education programs and for revenue-producing parking decks or structures. (1963, c. 847, s. 1; 1967, c. 1148, s. 1; 1971, c. 1061, s. 1.)

Editor's Note. — The 1967 amendment added "housing of faculty, and for revenue-producing parking decks or structures" at the end of this section.

The 1971 amendment inserted "adult or continuing education programs" near the end of the section.

§ **116-189. Definitions.**—As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, North Carolina Agricultural and Technical State University, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Central University, Pembroke State University, Western Carolina University, and Winston-Salem State University, or such above-referred to institution regardless of whatever name it may be called, or any additional state-supported institutions of higher learning that may be provided by the General Assembly of North Carolina or, if any such board shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers vested under this Article in the board shall be given by law.

(2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the board, for a period not exceeding one (1) year after completion of such construction, provisions for working capital, reserves for debt service and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, and the placing of the project in operation. Any obligation or expense incurred by the board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(5) The word "project" shall mean and shall include any one or more buildings or facilities for (i) the housing, health, welfare, recreation and convenience of students, (ii) the housing of faculty, (iii) adult or continuing education, and (iv) revenue-producing parking decks or structures, of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student, faculty and adult or continuing education

housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, infirmaries and other health care buildings, structures and facilities, academic facilities for adult or continuing education, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or adult or continuing education or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.

(1967, c. 1038; c. 1148, s. 2; 1969, c. 297, s. 8; c. 388; c. 608, s. 1; c. 801, ss. 2-4; 1971, c. 1061, s. 2.)

Editor's Note.—

The first 1967 amendment substituted "North Carolina Agricultural and Technical State University" for "Agricultural and Technical College of North Carolina," substituted "Appalachian State University" for "Appalachian State Teachers College," substituted "East Carolina University" for "East Carolina College," and substituted "Western Carolina University" for "Western Carolina College" in subdivision (1).

The second 1967 amendment added a former last sentence in subdivision (5).

The first 1969 amendment, effective July 1, 1969, deleted "Asheville-Biltmore College" and "Wilmington College" in subdivision (1).

The second 1969 amendment, effective July 1, 1969, substituted "Pembroke State University" for "Pembroke State College" in subdivision (1).

The third 1969 amendment, effective July 1, 1969, substituted "North Carolina Central University" for "North Carolina College at Durham" in subdivision (1).

The fourth 1969 amendment, effective July 1, 1969, substituted "Elizabeth City State University" for "Elizabeth City State College," "Fayetteville State University" for "Fayetteville State Teachers College" and "Winston-Salem State University" for "Winston-Salem State College" in subdivision (1).

The 1971 amendment substituted "reserves for debt service" for "reserves for interest" in subdivision (2). In subdivision (5), the amendment substituted the language beginning with "(i) the housing" and ending with "or structures" for "student housing, student activities, physical education or recreation," inserted "faculty and adult or continuing education," and inserted "academic facilities for adult or continuing education," all in the first sentence. In the second sentence of subdivision (5), the amendment inserted "or adult or continuing education," and deleted "student" in two places preceding "services." The amendment also deleted a former last sentence, which further defined "project."

Only the introductory paragraph and the subdivisions affected by the amendments are set out.

§ **116-191. Issuance of bonds.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 50 years from their date or dates, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than eight per centum (8%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the board under this Article may be exercised by the board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Article.

The board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds. (1963, c. 847, s. 5; 1969, c. 1158, s. 2; 1971, c. 511, s. 2.)

Editor's Note. — The 1969 amendment substituted "eight per centum (8%)" for "five per centum (5%)" in the second and last sentences of the first paragraph.

The 1971 amendment added the last paragraph.

ARTICLE 22.

Visiting Speakers at State-Supported Institutions.

§ 116-199. Use of facilities for speaking purposes.

Constitutionality. — The 1965 enactment of this section and § 116-200, and the procedures and regulations adopted by the board of trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. Dickson v. Sitterson, 280 F. Supp. 486 (M.D.-N.C. 1968).

§ 116-200. Enforcement of article.

Constitutionality. — The 1965 enactment of this section and § 116-199, and the procedures and regulations adopted by the board of trustees of the University of North Carolina on February 28, 1966, pursuant to these statutes, are facially unconstitutional because of vagueness. This is true even though the statutes and regulations, unlike their 1963 counterparts, only regulate, rather than prohibit, the appearance of a special group of speakers. Dickson v. Sitterson, 280 F. Supp. 486 (M.D.-N.C. 1968).

ARTICLE 23.

State Education Assistance Authority.

§ 116-201. Purpose and definitions.—(a) The purpose of this Article is to authorize a system of financial assistance, consisting of grants, loans, work-study or other employment, and other aids, for qualified residents of the State to enable them to obtain an education beyond the high school level by attending public or private educational institutions. The General Assembly has found and hereby declares that it is in the public interest and essential to the welfare and well-being of the inhabitants of the State and to the proper growth and development of the State to foster and provide financial assistance to residents of the State, properly qualified therefor, in order to help them to obtain an education beyond the high school level. The General Assembly has further found that many residents of the State who are fully qualified to enroll in appropriate educational institutions for furthering their education beyond the high school level lack the financial means and are unable, without financial assistance as authorized under this Article, to pay the cost of such education, with a consequent irreparable loss to the State of valuable talents vital to its welfare. The General Assembly has determined that the establishment of a proper system of financial assistance for such objective purpose serves a public purpose and is fully consistent with the long established policy of the State to encourage, promote and assist the education of the people of the State.

(b) As used in this Article the following terms shall have the following meanings unless the context indicates a contrary intent:

(1) "Act or undertaking" or "acts or undertakings" shall mean bonds of the Authority authorized to be issued under this Article;

(2) "Authority" shall mean the State Education Assistance Authority created by this Article or, if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this Article to the Authority shall be conferred by law;

(3) "Bond resolution" or "resolution" when used in relation to the issuance of bonds shall be deemed to mean either any such resolution or any trust agreement securing any bonds;

(4) "Bonds" or "revenue bonds" shall mean the bonds authorized to be issued by the Authority under this Article, which may consist of bonds,

notes or other debt obligations evidencing an obligation to repay borrowed money and payable solely from revenues and other moneys of the Authority pledged therefor;

(5) "Eligible institution," with respect to loans shall have the same meaning as such term has in section 1085 of Title 20 of the United States Code;

(6) "Eligible institution," with respect to grants and work-study programs shall include all State supported institutions of higher learning and all institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;

(7) "Obligations" or "student obligations" shall mean student loan notes and other debt obligations evidencing loans to students which the Authority may take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;

(8) "Private institution" shall mean an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or by any agency or political subdivision of the State or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools, or in the case of institutions that are not eligible to be considered for such accreditation, accredited in such categories and by such nationally recognized accrediting agencies as the Authority may designate;

(9) "Student" shall mean a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the North Carolina Board of Higher Education and published in the residency manual of said Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution and who is making suitable progress in his education in accordance with standards acceptable to the Authority and who has not received a bachelor's degree, or qualified therefor, and is otherwise classified as an undergraduate under such regulations as the Authority may promulgate; and

(10) "Student loans" shall mean loans to residents of this State to aid them in pursuing their education beyond the high school level. (1965, c. 1180, s. 1; 1967, c. 1177; 1971, c. 392, s. 1.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

Applied in Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Cited in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.—In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1.)

Editor's Note. — The 1967 amendment inserted "vocational and" near the beginning of the section, substituted "attending institutions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent" for "at institutions of higher education representing" in the first paragraph and substituted "training or" for "an" preceding 'education" at the end of that paragraph.

Stated in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-204. Powers of Authority.

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-206. Acquisition of obligations.—With the proceeds of bonds or any other funds of the Authority available therefor, the Authority may acquire from any bank, insurance company or other lending institution, student obligations, or any interest or participation therein in such amount, at such price or prices and upon such terms and conditions as the Authority shall determine to be in the public interest and desirable to carry out the purposes of this Article. The Authority shall take such actions and require the execution of such instruments deemed appropriate by it to permit the recovery, in connection with any such obligations or any interest or participation therein acquired by the Authority, of the amount to which the Authority may be rightfully entitled, and otherwise to enforce and protect its rights and interests thereto. (1965, c. 1180, s. 1; 1967, c. 955, s. 2; 1971, c. 392, s. 2.)

Editor's Note.—The 1971 amendment, effective July 1, 1971, rewrote this section as previously amended in 1967.

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209. Trust fund established; use and investment of fund; duties of State Treasurer.

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority.—Since issuance of tax-exempt revenue bonds by the State Education Assistance Authority for purpose of financing loans to college students does not pledge the credit of the State or of any political subdivision thereof, a taxpayer can suffer no injury from the issuance of the bonds and has no interest therein except his general interest as a member of the public in good government pursuant to the North Carolina Constitution, and, consequently, a taxpayer has no standing to seek an injunction restraining actions of the Authority and its fiscal agent relating to the issuance of the bonds and the expenditure of the proceeds thereof. Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Allegation Insufficient Basis for Injunctive Relief.—The allegation that, by expressing its intent to issue a further series of bonds, the Authority has indicated that "additional tax funds will be expended" unless enjoined is not sufficient basis for injunctive relief, since this allegation is consistent with a contemplated use of funds appropriated from tax revenues for "lawful functions" of the Authority, such as the payment of salaries and expenses of employees engaged in the performance of functions authorized by this section. Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.1. Provisions in conflict.—Any of the foregoing provisions of this act which shall be in conflict with the provisions hereinbelow set forth shall be repealed to the extent of such conflict. (1967, c. 1177.)

Cited in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ 116-209.2. Reserves.—The Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing any bonds that proceeds of such bonds may be used to establish reserve accounts in any trustee or banking institution or otherwise as determined by the Authority, for securing such bonds and facilitating the making of student loans and acquiring student obligations, to provide for the payment of interest on such bonds for such period of time as the Authority shall determine, and for such other purposes as will facilitate the issuance of bonds at rates of interest and upon terms deemed reasonable by the Authority and will, in the Authority's judgment, facilitate carrying out the purposes of this Article. (1967, c. 1177; 1971, c. 392, s. 3.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

§ 116-209.3. Additional powers.—The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this act and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account. (1967, c. 1177; 1971, c. 392, s. 4.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the last paragraph.

Sections 116-209.1 to 116-209.15 do not unconstitutionally authorize use of public funds. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is expected that a student loan will inure to the private benefit of the person who obtains it. It is equally true that the education provided throughout the entire school system is intended to inure to the benefit of the individual who obtains it. However, the fact that the individual obtains a private benefit cannot be considered sufficient ground to defeat the execution of the paramount public purpose of encouraging education. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Whether the student loan program is wise or unwise is for determination by the General Assembly. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Assistance of Federal Government Is Prerequisite to Functioning of Student Loan Program.—The assistance of the federal government and coordination with its program are prerequisite to the functioning of the North Carolina student loan program. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

And Only Loans Qualifying for Assistance under Federal Statutes May Be Made.—The only student loans the Authority is authorized to make or purchase are student loans which qualify under the federal statutes for federal assistance in respect of interest subsidy and guaranty. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

It is implicit in the provisions of §§ 116-209.1 to 116-209.15 that the General Assembly contemplated and intended that no loans would be made from the proceeds from the sale of tax-exempt revenue bonds except student loans made in compliance with the standards prescribed by federal legislation and therefore qualified for assistance. Seemingly, the General Assembly realized that its specification of more precise standards for "student loans" might impede the functioning of the Authority and render it unable to qualify from time to time for the federal assistance upon which its program depended. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

The provisions of this section and § 116-209.6 disclose that the General Assembly is well aware of the federal, State and private programs of low-interest insured loans to students in institutions of higher education and other post-secondary schools. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

Borrowers Unable to Make Payment until Completion of Education.—Persons who obtain "student loans" are unable to make payment on account of interest or principal until completion of their education by graduation or otherwise. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ **116-209.4. Authority to issue bonds.**—The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in an aggregate principal amount outstanding at any time of not exceeding fifty million dollars ($50,000,000.00). The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds, Series ....," inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 30 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this act.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in G.S. 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this act without obtaining, except as otherwise expressly provided in this act, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this act and the provisions of the resolution authorizing the issuance of such bonds.

The Authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for making student loans or acquiring obligations under this Article. The issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect to the same shall be governed by the provisions of this Article which relate to the issuance of revenue bonds insofar as such provisions may be appropriate. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. (1967, c. 1177; 1971, c. 392, ss. 5-7.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, substituted "fifty million dollars" for "twelve and one-half million dollars" in the first sentence, substituted "30 years" for "20 years" in the second sentence of the second paragraph, added the present third and fourth sentences in that paragraph and added the last paragraph.

Constitutionality.—The people of North Carolina constitute the State's greatest resource. Where bond proceeds are to be used solely to make loans to meritorious North Carolinians of slender means and thereby minimize the number of qualified persons whose education or training is interrupted or abandoned for lack of funds, the bond proceeds are used for a public purpose when used to make such loans. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ **116-209.5. Bond resolution.**—The resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the purchase or sale of obligations, the making of student loans, the insurance of student loans, the fees, charges and premiums to be fixed and collected, the terms and conditions for the issuance of additional bonds and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of administering this act and may be payable, together with other expenses of operation and administration under this act incurred by the Authority, from the Loan Fund.

In the discretion of the Authority, any bonds issued under the provisions of this Article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the fees, penalties, charges, proceeds from collections, grants, subsidies, donations and other funds and revenues to be received therefor. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to student loans, the acquisition of obligations, insurance, the fees, penalties and other charges to be fixed and collected, the sale or purchase of obligations or any part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of carrying out the purposes for which such bonds shall be issued.

In addition to all other powers granted to the Authority by this Article, the

Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this Article any moneys received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriation; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation. (1967, c. 1177; 1971, c. 392, s. 8.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the second and third paragraphs.

§ **116-209.6. Revenues.**—The Authority is authorized to fix and collect fees, charges, interest and premiums for making or insuring student loans, purchasing, endorsing or guaranteeing obligations and any other services performed under this act. The Authority is further authorized to contract with the United States of America or any agency or officer thereof and with any person, partnership, association, banking institution or other corporation respecting the carrying out of the Authority's functions under this act. The Authority shall at all times endeavor to fix and collect such fees, charges, receipts, premiums and other income so as to have available in the sinking fund at all times an amount which, together with any other funds made available therefor, shall be sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. Money in the sinking fund, except such part thereof as may be necessary to provide such reserves for the bonds as may be provided for in the resolution authorizing the issuance of such bonds, shall be set aside in the sinking fund at such regular intervals as may be provided in such resolution and is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, charges, receipts, proceeds and other revenues and moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims ot any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The resolution by which a pledge is created need not be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds. Any such resolution may, in the discretion of the Authority, provide for the transfer of surplus money in the sinking fund to the credit of the Loan Fund. Except as may otherwise be provided in such resolution, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1967, c. 1177.)

Cross Reference.—See note to § 116-209.3.

§ **116-209.7. Trust funds.**—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of the act, whether as proceeds from the sale of bonds, sale of property or insurance, or as payments of student loans, whether principal, interest or penalties, if any, thereon, or as insurance premiums, or from the purchase or sale of obligations, or as any other receipts or revenues derived hereunder, shall be deemed to be trust funds to be held and applied solely as provided in this act. The resolution authorizing the bonds of any issue may provide that any of such money may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and such resolution may provide. (1967, c. 1177.)

§ **116-209.8. Remedies.**—Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by such resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution authorizing the issuance of such bonds, or under any contract executed by the Authority pursuant to this act, and may enforce and compel the performance of all duties required by this act or by such resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of fees, charges and premiums and the collection of principal, interest and penalties, if any, on student loans or obligations evidencing such loans. The Authority may provide in any trust agreement securing the bonds that any such rights may be enforced for and on behalf of the holders of bonds by the trustee under such trust agreement. (1967, c. 1177; 1971, c. 392, s. 9.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, added the last sentence.

§ **116-209.9. Negotiability of bonds.**—All bonds issued under the provisions of this Article shall have and are hereby declared to have all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code of the State but no provision of such Code respecting the filing of a financial statement to perfect a security interest shall be deemed applicable to or necessary for any security interest created in connection with the issuance of any such bonds. (1967, c. 1177; 1971, c. 392, s. 10.)

Editor's Note. — The 1971 amendment, effective July 1, 1971, rewrote this section.

§ **116-209.10. Bonds eligible for investment.** — Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1967, c. 1177.)

Whether tax-exempt revenue bonds issued under § 116-209.4 should be approved for investment by fiduciaries and for deposit "for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law," as set forth in this section, is for determination by the General Assembly. Whether the purchase of these bonds is wise or unwise is for determination by the investor. State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ **116-209.11. Additional pledge.** — Notwithstanding any other provision to the contrary herein, the Authority is hereby authorized to pledge as security for any bonds issued hereunder any contract between the Authority and the United States of America under which the United States agrees to make funds available to the Authority for any of the purposes of this act, to insure or guarantee the payment of interest or principal on student loans, or otherwise to aid in promoting or facilitating student loans. (1967, c. 1177.)

§ **116-209.12. Credit of State not pledged.**—Bonds issued under the provisions of this act shall not be deemed to constitute a debt, liability or obligation of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that the Authority shall not be obligated to pay the same nor the interest thereon except from the revenues, proceeds and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. Expenses incurred by the Authority in carrying out the provisions of this act may be made payable from funds provided pursuant to this act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been so provided. (1967, c. 1177.)

Taxpayer Has No Standing to Seek Injunction Restraining Acts of Authority.—See same catchline in note under § 116-209.

Quoted in State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ **116-209.13. Tax exemption.** — The exercise of the powers granted by this act in all respects will be for the benefit of the people of the State, for their well being and prosperity and for the improvement of their social and economic conditions, and the Authority shall not be required to pay any taxes on any property owned by the Authority under the provisions of this act or upon the income therefrom, and the bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1967, c. 1177.)

Constitutionality.—See State Educ. Assistance Authority v. Bank of Statesville, 276 N.C. 576, 174 S.E.2d 551 (1970).

§ **116-209.14. Annual reports.**—The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering the operations of the Authority during such year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177.)

§ **116-209.15. Merger of trust fund.**—The Authority may merge into the Loan Fund the trust fund established pursuant to § 116-209 hereof and may transfer from such trust fund to the credit of the Loan Fund all money, investments and other assets and resources credited to such trust fund, for application and use in accordance with the provisions of this act pertaining to the Loan Fund, including the power to pay expenses of the Authority from the Loan Fund to the extent that other funds are not available therefor. (1967, c. 1177.)

Applied in Nicholson v. State Educ. Assistance Authority, 275 N.C. 439, 168 S.E.2d 401 (1969).

§ **116-209.16. Other powers; criteria.**—The Authority, in addition to all the powers more specifically vested hereunder, shall have all other powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the power to receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money, any insurance or guarantee of any student loan or student obligations, any loans, advances, contributions, interest subsidies or any other assistance from any federal or State agency or other entity; to pledge or assign any money, charges, fees or other revenues and any proceeds derived by the Authority from any student loans, obligations, sales of property, insurance or other sources; to borrow money and to issue in evidence thereof revenue bonds of the Authority for the purposes of this Article and to issue revenue refunding bonds; to conduct studies and surveys respecting the needs for financial assistance of residents of the State respecting education beyond the high school level.

In carrying out the powers vested and the responsibilities imposed under this Article, the Authority shall be guided by and shall observe the following criteria and requirements, the determination of the Authority as to compliance with such criteria and requirements being final and conclusive:

(1) Any student loan, grant or other assistance provided by the Authority to any student shall be necessary to enable the student to pursue his education above the high school level; and

(2) No student loan, grant or other financial assistance shall be provided to any student by the Authority except in conformity with the provisions of this Article and to carry out the purposes hereof.

The Authority shall by rules and regulations prescribe other conditions, criteria and requirements that it shall deem necessary or desirable for providing financial assistance to students under this Article upon a fair and equitable basis, giving due regard to the needs and qualifications of the students and to the purposes of this Article. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.17. Establishment of student assistance program. — The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for needy North Carolina undergraduate students at public or private institutions in this State. This objective shall be accomplished through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State, institutional or other sources, be met through work-study programs, loans, grants and out-of-term employment, or a combination of these forms of assistance. No student shall be eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.18. Powers of Authority to administer student assistance program.—In order to accomplish the purposes of this Article the Authority is authorized:

(1) To receive from the general fund or other sources such sums as the General Assembly may authorize from time to time for such purposes, and to receive from any other donor, public or private, such sums as may be made available, and to cause such sums to be disbursed for the purposes for which they have been provided;

(2) To establish such criteria as the Authority shall deem necessary or desirable for determining the need of students for grants under this Article, as opposed to other forms of financial assistance, and for deciding who shall receive grants;

(3) To prescribe the form and to regulate the submission of applications for

assistance and to prescribe the procedures for considering and approving such applications;

(4) To provide for the making of, and to make, grants under this Article under such terms and conditions as the Authority shall deem advisable;

(5) To encourage educational institutions to increase the resources available for financial assistance; to prescribe such formulas for institutional maintenance of effort as the Authority may determine to be consistent with the purposes of this Article;

(6) To provide by contract for the administration of all or any portion of the student assistance program by nonprofit organizations or corporations, pursuant to regulations and criteria established by the Authority;

(7) To serve, on designation by the Governor, or as may otherwise be provided by federal law, as the State agency to administer such statewide programs of student assistance as shall be established from time to time under federal law; and

(8) To have all other powers and authority necessary to carry out the purposes of the student assistance program, including, without limitation, all the powers given to the Authority by G.S. 116-204 and by other provisions of the General Statutes. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ **116-209.19. Grants to students.**—The Authority is authorized to make grants to students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Advisory Budget Commission, after consultation with the State Budget Officer, Board of Higher Education and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Advisory Budget Commission after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority in determining the needs of students for grants, may give consideration to, among other factors, the amount of other financial assistance that may be available to such students such as nonrepayable awards under the educational opportunity grant program and Health Professions Education Assistance Act. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.20. Public purpose.—No expenditure of funds under this Article shall be made for any purpose other than a public purpose. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.21. Cooperation of the Board of Higher Education. — The Board of Higher Education shall provide the secretariat for the Authority. The Executive Director of the Authority, who shall be its principal executive officer, shall be elected by the Board of Directors of the Authority on nomination of the Director of the Board of Higher Education. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.22. Constitutional construction.—The provisions of this Article are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

§ 116-209.23. Inconsistent laws inapplicable.—Insofar as the provisions of this Article are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Article shall be controlling, except that no provision of the 1971 amendments to this Article shall apply to scholarships for children of war veterans as set forth in Article 4 of Chapter 165, as amended. (1971, c. 392, s. 11.)

Editor's Note.—Section 12, c. 392, Session Laws 1971, makes the act effective July 1, 1971.

ARTICLE 25.

Disruption on Campuses of State-Owned Institutions of Higher Education.

§ 116-212. Campus of state-supported institution of higher education subject to curfew.—The chancellor or president of any state-supported institution of higher learning may designate periods of time during which the campuses of such institutions and designated buildings and facilities connected therewith are off-limits and subject to a curfew as to all persons who are not faculty members, staff personnel, currently enrolled students of that institution, local law-enforcement officers, members of the national guard on active duty, members of the General Assembly, the Governor of North Carolina and/or his designated agents, persons authorized by the chief administrative officer of the institution or his designated agent, and any person who satisfactorily identifies himself as a reporter for any newspaper, magazine, radio or television station. Any person not herein authorized who comes onto or remains on said campus in violation of this section shall be punished as set out in § 116-213. (1969, c. 860, s. 1.)

§ 116-213. Violation of curfew a misdemeanor; punishment.—(a) Any person who during such period of curfew utilizes sound-amplifying equipment of any kind or nature upon the premises subject to such curfew in an educational, administrative building, or in any facility owned or controlled by the State or a State institution of higher learning, or upon the campus or grounds of any such institution, without the permission of the administrative head of the institution or his designated agent, shall be guilty of a misdemeanor and punished as hereinafter set forth. For the purposes of this section the term "sound-amplifying equipment" shall mean any device, machine, or mechanical contrivance which is capable of amplifying sound and capable of delivering an electrical input of one or more watts to the loudspeaker, but this section shall not include radios and televisions.

(b) Any person convicted of violating any provision of § 116-212 or 116-213, or who shall enter a plea of guilty to such violation or a plea of nolo contendere, shall be fined not exceeding five hundred dollars ($500.00) or imprisoned not exceeding six months, or both such fine and imprisonment, in the discretion of the court. (1969, c. 860, ss. 2, 3.)

Chapter 116A.

Escheats and Abandoned Property.

Sec.
116A-1. Escheats to Escheat Fund.
116A-2. Unclaimed real and personal property escheats to the Escheat Fund.
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Editor's Note. — Session Laws 1971, c. 1135, ss. 2 and 3, effective July 1, 1971, enacted §§ 116A-1 to 116A-7 and 116A-8 to 116A-10 of this Chapter. Sections 116A-1 to 116A-7 incorporated, in revised form, the provisions of former §§ 116-20 to 116-25.

Session Laws 1971, c. 1135, s. 4, provides: "G.S. 55-130, G.S. 53-20 (l) and (p) and all other statutes referring to the 'University of North Carolina' in connection with escheats is hereby amended by changing 'University of North Carolina' to 'State Treasurer'."

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§ **116A-1. Escheats to Escheat Fund.**—All real estate which has heretofore accrued to the State, or shall hereafter accrue from escheats, shall be vested in the Escheat Fund. Title to any such real property which has escheated to the Escheat Fund shall be conveyed by deed in the manner now provided by G.S. 146-74 through G.S. 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the State Treasurer is a party, and wherein said court enters a judgment of escheat for any real property, then, upon petition of the State Treasurer in said action, said court shall have the authority to appoint the State Treasurer or his designated agent as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said Commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the Escheat Fund. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494; 1961, c. 257; 1971, c. 1135, s. 2.)

Editor's Note. — This section was formerly § 116-20. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

For a brief discussion of the 1947 amendment to this section and other provisions relating to escheats, see 25 N.C.L. Rev. 421.

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

Right Conferred by Constitution and Extended by Statute.—See Board of Educ. v. Johnston, 224 N.C. 86, 29 S.E.2d 126 (1944).

When Real Property Escheats. — Real property escheats only when the owner dies intestate or dies testate without disposing of the same by will and without leaving surviving any heir, kindred or spouse to inherit under the laws of this State. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968).

Land held by incorporated town held to escheat upon repeal of town charter under the facts of the case. University of North Carolina v. High Point, 203 N.C. 558, 166 S.E. 511 (1932).

§ 116A-2. Unclaimed real and personal property escheats to the Escheat Fund.—Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, kindred or spouse to inherit said property under the laws of this State, such real and personal property shall escheat. The State Treasurer shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated, and the real property may be sold according to the provisions of G.S. 116A-1. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the Escheat Fund where said funds, together with all other escheated funds, shall be held without liability for profit, or interest subject to any just claims therefor. (1957, c. 1105, s. 1; 1971, c. 1135, s. 2.)

Editor's Note. — This section was formerly § 116-21. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

§ 116A-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.—All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs or spouse to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid, or delivered, by such administrator or executor to the State Treasurer as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the State Treasurer is authorized to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator, or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the State Treasurer shall hold the same without liability for profit or interest, subject to any just claims therefor. The provisions of this section and G.S. 116A-2 shall apply to the estate of a person missing for seven years and the State Treasurer may bring an action to have an administrator appointed in such case. (1957, c. 1105, ss. 2, 2½; 1971, c. 1135, s. 2.)

Editor's Note. — This section combines former §§ 116-22 and 116-22.1. The provisions of the former sections were revised, combined and transferred to their present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

§ 116A-4. Other unclaimed personalty.—Personal property of every kind, except as is otherwise provided by this Chapter, including dividends of corporations, or of joint-stock companies or associations, including savings and loan associations, choses in action, and sums of money in the hands of any person including clerks of federal courts, firm or corporation which shall not be recovered or claimed by the parties entitled thereto for three years after the same shall become due and payable, shall be deemed derelict property, and shall be paid or delivered to the Escheat Fund and held without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Code, ss. 2628, 2629; Rev., s. 4284; C. S., s. 5786; 1947, c. 614, s. 2; 1957, c. 1049; 1971, c. 1113; c. 1135, s. 2.)

Cross Reference. — See note under § 116A-1.

Editor's Note. — This section was formerly § 116-23. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

Session Laws 1971, c. 1113, effective July 1, 1971, inserted "including clerks of federal courts" near the middle of the section.

§ **116A-4.1. Uncashed money orders and travelers checks.**—(a) Any funds held or owing by any organization for the payment of any money order or travelers check on which such organization is directly liable shall be deemed abandoned property and shall be paid to the Escheat Fund:

(1) When the instrument in the case of a money order has been outstanding seven years from the date of its issuance or in the case of a travelers check when it has been outstanding 15 years from the date of its issuance, and

(2) When the last known address of the apparent owner of the instrument is in this State.

Where the records of the holder of the funds do not show a last known address of the apparent owner of a money order or travelers check, it is presumed that the last known address of the person entitled to the funds is in the state in which the money order or travelers check was issued. Any money order or travelers check held by any person, firm or corporation which remains unclaimed shall be deemed abandoned and paid to the Escheat Fund after three years.

(b) On or before the 1st day of June of each year, every organization shall pay to the State Treasurer all funds deemed abandoned pursuant to this section as of December 31 of the previous year. Such payment shall be accompanied by a statement setting forth such information as the State Treasurer may require.

(c) Any holder who has paid to the Escheat Fund moneys deemed abandoned property pursuant to the provisions of this section may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment, the State Treasurer shall forthwith reimburse such holder to the extent of the full amount, without interest, paid into the Escheat Fund with respect to the instruments involved. If a holder declines or is unable to make payment to any person claiming ownership of funds paid to the Escheat Fund, the person claiming ownership may submit his claim to the State Treasurer who shall pay such claimant forthwith upon submission of adequate proof of ownership. (1971, c. 1135, s. 2.)

§ **116A-5. Unclaimed funds held or owing by life insurance companies.**—(a) Definitions.—The term "unclaimed funds" as used in this section shall mean and include all moneys held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for five years or more after such moneys became due and payable under any life or endowment insurance policy, or moneys payable under annuity contracts or all dividends payable to holders of policies. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Moneys shall be deemed to be "due and payable" within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations.

(b) Scope.—This section shall apply to all unclaimed funds, as herein defined, held and owing by any life insurance company doing business in this State where the last known address, according to the records of such company, of the person entitled to such funds is within this State, provided that if a person other than the insured be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this section that the last known address of the person entitled to such funds is the same as the last known address of the insured according to the records of such company.

(c) Reports.—Every such life insurance company shall on or before the first day of May of each year make a report in writing to the Commissioner of Insurance of all unclaimed funds, as hereinbefore defined, held or owing by it on the thirty-first day of December next preceding. Such report shall be signed and sworn to by an officer of such company and shall set forth:

(1) In alphabetical order the full name of the insured, his last known address according to the company's records, and the policy number;
(2) The amount appearing from the company's records to be due on such policy;
(3) The date such unclaimed funds became payable;
(4) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and
(5) Such other identifying information as the Commissioner of Insurance may require.

(d) Notice; Publication.—On or before the first day of September following the making of such reports under this section, the Commissioner of Insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this State in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or by posting such notice at the courthouse door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with:

(1) The amount reported due and the date it became payable,
(2) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and
(3) The name and address of the company.

The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than December 1st such unclaimed funds still remaining will be paid to the Escheat Fund which shall thereafter be liable for the payment thereof.

It shall be not obligatory upon the Commissioner of Insurance to publish any item of less than fifty dollars ($50.00) in such notice, unless the Commissioner of Insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the Escheat Fund.

(e) Payment to the Escheat Fund.—All unclaimed funds contained in the report required to be filed under this section, excepting those which have ceased to be unclaimed funds since the date of such report, shall be paid over to the Escheat Fund on or before the following December 1st.

The Commissioner of Insurance shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this section shall be extended for a like period.

(f) Custody of Unclaimed Funds; Insurers Exonerated.—Upon the payment of such unclaimed funds to the Escheat Fund, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

(g) Reimbursement for Claims Paid by Insurers.—Any life insurance company which has paid to the Escheat Fund moneys deemed unclaimed funds pursuant to the provisions of this section may make payment to any person appearing to such company to be entitled thereto, and upon proof of such payment the State of North Carolina shall forthwith reimburse such company to the extent of the full amount, without interest, paid the Escheat Fund for the account of such claimant.

(h) Determination and Review of Claims.—Any person entitled to unclaimed funds paid to the Escheat Fund may file a claim at any time with the Commissioner of Insurance. The Commissioner of Insurance shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within 90 days after the receipt of such claim, the claimant may make application to the Superior Court of Wake County, upon not less than 30 days' notice to the Commissioner of Insurance and the State Treasurer for an order to show cause why he should not accept and order paid such claim.

(i) Payment of Allowed Claims.—Any claim which is accepted by the Commissioner of Insurance or ordered to be paid by a court of competent jurisdiction shall be paid by the Escheat Fund.

(j) Records Required.—The State Treasurer shall keep a public record of each payment of unclaimed funds received from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured, and of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and with respect to each policy, its number, the name of the company, and the amount due. (1949, c. 682; 1957, c. 1050; 1961, c. 493; 1971, c. 1135, s. 2.)

Editor's Note.—This section was formerly § 116-23.1. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

§ **116A-6. Certain unclaimed bank deposits to Escheat Fund.**—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the Escheat Fund and held, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the Escheat Fund of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the State Treasurer shall cause to be posted and kept posted for 30 days at the courthouse door of the county in which such bank is located, a notice giving the names of the persons in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the bank paying over said funds to the Escheat Fund shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is the identical person to whom such funds are due, the State Treasurer shall pay the same in full to such person, but without any liability for interest or profits thereon. Debits of service charges and debits of intangible taxes made by banks shall not be considered debits within the meaning of this section. A bank shall be deemed to be unable to locate a depositor or owner when the present address of the depositor or owner is unknown to the bank, and the United States mail addressed to the depositor or owner at the last known address, with a return address of the sending bank on the envelope, is returned undelivered to the bank mailing the same. (1937, c. 400; 1939, c. 29; 1947, c. 614, s. 3; 1949, c. 1069; 1971, c. 1135, s. 2.)

Cross References.—See note to § 116A-1. As to escheat of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (1).

Editor's Note.—This section was formerly § 116-24. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

See 15 N.C.L. Rev. 350. For comment on the 1949 amendment, see 27 N.C.L. Rev. 427. For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

§ 116A-6.1. Certain unclaimed Postal Savings System accounts to Escheat Fund.—(a) Declaration of Escheat.—All Postal Savings System accounts created by the deposits of persons whose last known addresses are in this State which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have [been] abandoned by their owners and are declared to escheat and become the property of this State.

(b) Obtaining information on accounts. — The State Treasurer shall request from the Bureau of Accounts of the United States Treasury Department records providing the following information: The names of depositors at the Post Offices of this State whose accounts are unclaimed, their last addresses as shown by the records of the Post Office Department, and the balance in each account. He shall agree to return to the Bureau of Accounts promptly all account cards showing last addresses in another state.

(c) Proceeding to adjudicate escheat.—The State Treasurer may bring proceedings in the Superior Court of Wake County to escheat unclaimed Postal Savings System accounts held by the United States Treasury Department. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time.

(d) Notice.—The State Treasurer shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a Postal Savings System account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars ($25.00).

(2) A general notice of intention to escheat Postal Savings System accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this State.

(3) A special notice of intention to escheat the unclaimed Postal Savings System accounts originally deposited in each Post Office must be published once in each of three successive weeks in a newspaper published in the county in which the Post Office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars ($3.00) or more.

(e) Collection and deposit of funds.—The Treasurer shall present a copy of each final judgment of escheat to the United States Treasury Department for payment of the principal due and the interest computed under regulations of the United States Treasury Department. The payment received shall be deposited in the Escheat Fund.

(f) Indemnification of the United States.—This State shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed Postal Savings System accounts. The burden of the indemnification falls upon the Fund into which the proceeds of the escheated accounts have been paid. (1971, c. 1184, ss. 1-6.)

§ **116A-7. Other escheats.**—(a) Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation within the State are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the Escheat Fund immediately upon the expiration of two years from the end of the calendar year in which the same becomes due, provided, that this paragraph shall not apply to any person, firm or corporation employing less than 25 persons.

(b) Rebates and returns of overcharges and unclaimed meter deposits due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the Utilities Commission, shall be paid to the Escheat Fund.

(c) All moneys in the hands of clerks of the superior court, the State Treasurer, or any other officer or agency of the State or county, or any other depository whatsoever, as proceeds of the limitations of State banks by receivers appointed in the superior court prior to the Liquidation Act of 1927, shall be immediately turned over into the custody of the Escheat Fund: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

(d) All moneys in the hands of the Treasurer of the State, represented by State warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the Escheat Fund.

(e) Unpaid and unclaimed dividends or other distributions due to any person or persons from any association organized under Subchapter IV or Subchapter V of Chapter 54 of the General Statutes are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the Escheat Fund immediately upon the expiration of three years from the time the same became due. Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

(f) Any funds derived from the liquidation of any national bank organized and operated in this State, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the Comptroller of the Currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the Comptroller of the Currency and deposited with the Treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this State, which for a period of 10 years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the Escheat Fund by the Comptroller of the Currency, or by such agent as may have the funds in charge, to be held in protective custody by the Escheat Fund until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the Escheat Fund, the Comptroller of the Currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the State Treasurer shall cause to be posted, and keep posted for 30 days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the Comptroller of the Currency or liquidating agent of such insolvent national bank shall furnish such information to the State Treasurer when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund, is due, the State Treasurer shall pay such part in full to such person, but without any liability for interest or profits thereon. (1939, c. 22; 1947, c. 614, s. 1; c. 621, s. 2; 1953, c. 1202, ss. 1, 2; c. 1205; 1957, c. 1051; 1971, c. 1135, s. 2.)

Editor's Note.—This section was formerly § 116-25. It was revised and transferred to its present position by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

For comment on escheat of intangible property, see 2 Wake Forest Intra. L. Rev. 100 (1966).

§ **116A-7.1. Reports required.**—A certified copy of the balance sheet or final statement for each calendar year of any person, firm or corporation having 25 or more employees in the State of North Carolina shall be filed with the North Carolina tax return of such person, firm or corporation indicating in a separate account or as a separate item in the "surplus" account the following:

(1) All unclaimed salaries, wages and other compensation from any person, firm or corporation employing 25 or more people unclaimed for two years which escheat pursuant to G.S. 116A-7;

(2) All unclaimed dividends of corporations, joint stock companies or associations unclaimed for three years which escheat pursuant to G.S. 116A-4;

(3) All rebates and returns of overcharges and unclaimed meter deposits due by utility companies unclaimed for two years which escheat pursuant to G.S. 116A-7; and

(4) Unclaimed dividends or other distributions due from any association organized under Subchapter IV or Subchapter V of Chapter 54 of the General Statutes unclaimed for three years which escheat pursuant to G.S. 116A-7. (1971, c. 1110, s. 1.)

Editor's Note. — Session Laws 1971, c. 1110, s. 2, makes the act effective July 1, 1971.

§ **116A-7.2. Penalty for failure to make reports.**—It shall be the duty of the State Treasurer and of the Attorney General to see that all reports required by the escheat provisions are properly made at the time and in the manner and form provided and to take any necessary action to secure compliance with the provisions of Chapter 116A of the General Statutes regarding escheats. Any holder who shall fail, neglect or refuse to make and file any required report shall be liable to the State of North Carolina in the sum of three hundred dollars ($300.00) for each and every such failure, neglect or refusal, and an additional sum of ten dollars ($10.00) for each and every day of the period of default. Such penalty may be recovered by the State in an appropriate legal proceeding instituted by the State upon the relation of the State Treasurer. The proceeds of any penalty or judgment recovered in such action shall be paid to the State Treasurer to be added to the Escheat Fund and to be held by the State Treasurer absolutely and in fee simple.

The recovery of such penalty shall not relieve the defendant-holder from the duty of making and filing said reports. The State of North Carolina, upon relation of the State Treasurer, shall have the benefit of the remedy of mandamus to compel compliance with the requirements of the escheat provisions relative to the making and filing of said reports, or the State Treasurer may compel compliance by suit and/or bill for discovery. (1971, c. 1109, s. 1.)

Editor's Note. — Session Laws 1971, c. 1109, s. 2, makes the act effective July 1, 1971.

§ **116A-8. Escheat Fund.**—(a) The Escheat Fund shall be established by the State Treasurer and maintained by him as a separate fund. All funds which escheat shall be paid to the State Treasurer. Any funds previously escheated to the

Escheat Fund which are claimed by their rightful owner shall be returned by the State Treasurer from the Escheat Fund.

(b) The payment of any funds described in this Chapter, or the transfer of any personal property described in this Chapter, to the Escheat Fund shall relieve any person, firm, association or corporation, or any State or federal official or agency of further liability therefor.

(c) The State Treasurer shall deposit or invest the Escheat Fund in his discretion, as provided for State funds generally. (1971, c. 1135, s. 3.)

§ 116A-9. Distribution of income of Fund.—The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 1 to the State Education Assistance Authority for loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. (1971, c. 1135, s. 3.)

§ 116A-10. Terms of loans.—Loans made by the State Education Assistance Authority shall be made under terms of other loans made by the Authority. (1971, c. 1135, s. 3.)

§ 116A-11. Statute of limitations.—Any property, real or personal, which has escheated to the University of North Carolina or the Escheat Fund, of which the State Treasurer is custodian, shall be subject to refund for a period of seven years from the date on which it first became due and payable to the Escheat Fund. After the expiration of seven years, the University or Escheat Fund and the State Treasurer as custodian shall cease to be liable and may not pay such funds to one claiming to be the rightful owner.

No action may be brought after the expiration of the seven-year period against the State, the University, the Escheat Fund and the State Treasurer or any agents thereof for the refund of escheated property. (1971, c. 1111, s. 1.)

Editor's Note.—Session Laws 1971, c. 1111, s. 2, provides: "This act shall become effective July 1, 1971, and shall apply to all funds previously escheated to the University of North Carolina and to subsequent escheats, except that as to any funds held by the University on which the statute shall have run on July 1, 1971, the rightful owners shall have until January 1, 1972, to make their claims."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1971

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1971 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

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